

Sunshine Act Meetings

Federal Register

Vol. 57, No. 191

Thursday, October 1, 1992

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

AFRICAN DEVELOPMENT FOUNDATION

Board of Directors Meeting

TIME: 4:00-5:00 p.m.

PLACE: Department of State.

DATE: Tuesday, October 6, 1992.

STATUS: Open.

Agenda

1. Selection of next Board meeting date.
2. Delegation of Authority.

If you have any questions or comments, please direct them to Ms. Janis McCollim, Executive Assistant to the President, who can be reached at (202) 673-3916.

Gregory Robeson Smith,
President.

[FR Doc. 92-23976 Filed 9-29-92; 2:47 pm]

BILLING CODE 6116-01-M

FARM CREDIT ADMINISTRATION

Farm Credit Administration Board;
Special Meeting

SUMMARY: Notice is hereby given, pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), of the special meeting of the Farm Credit Administration Board (Board).

DATE AND TIME: The special meeting of the Board was held at the offices of the Farm Credit Administration in McLean, Virginia, on September 18, 1992, from

11:55 a.m. until such time as the Board concluded its business.

FOR FURTHER INFORMATION CONTACT: Curtis M. Anderson, Secretary to the Farm Credit Administration Board, (703) 883-4003, TDD (703) 883-4444.

ADDRESS: Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102-5090.

SUPPLEMENTARY INFORMATION: This meeting of the Board was open to the public (limited space available). The matter considered at the meeting was:

Open Session

A. New Business

1. Request from National Bank for Cooperatives to Temporarily Exceed its Lending Limit to One Borrower.

Dated: September 28, 1992.

Curtis M. Anderson,
Secretary, Farm Credit Administration Board.
[FR Doc. 92-23913 Filed 9-28-92; 4:50 pm]

BILLING CODE 6705-01-M

FARM CREDIT ADMINISTRATION

Farm Credit Administration Board;
Special Meeting

SUMMARY: Notice is hereby given, pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), of the forthcoming special meeting of the Farm Credit Administration Board (Board).

DATE AND TIME: The special meeting of the Board will be held at the offices of the Farm Credit Administration in McLean, Virginia, on October 1, 1992, from 10:00 a.m. until such time as the Board concludes its businesses.

FOR FURTHER INFORMATION CONTACT: Curtis M. Anderson, Secretary to the Farm Credit Administration Board, (703) 883-4003, TDD (703) 883-4444.

ADDRESS: Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102-5090.

SUPPLEMENTARY INFORMATION: Parts of this meeting of the Board will be open to the public (limited space available), and parts of this meeting will be closed to the public. The matters to be considered at the meeting are:

Open Session

Approval of Minutes

A. New Business

1. Regulations

- a. Conservatorship and Receivership (Final);
- b. Release of Information (Proposed);

2. Other

- a. Proposed Reporting Mechanisms for OSMO;

Closed Session*

A. New Business

1. Enforcement Actions.

Dated: September 28, 1992.

Curtis M. Anderson,
Secretary, Farm Credit Administration Board.
[FR Doc. 92-23914 Filed 9-28-92; 4:50 pm]

BILLING CODE 6705-01-M

* Session closed to the public—exempt pursuant to 5 U.S.C. 552b(c) (8) and (9).

Corrections

Federal Register

Vol. 57, No. 191

Thursday, October 1, 1992

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF DEFENSE

48 CFR Parts 202, 204, 208, 210, 214, 215, 216, 219, 223, 225, 226, 227, 228, 231, 232, 236, 237, 239, 242, 245, 252, 253

[Defense Acquisition Circular (DAC) 91-3]

Acquisition Regulations; Miscellaneous Amendments; Interim Rules

Correction

In rule document 92-21665 beginning on page 42626 in the issue of September 15, 1992, in the first column, under **DATES** in the eighth line, "30 days from

publication" should read "October 15, 1992."

BILLING CODE 1505-01-D

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 30

[FAC 90-12; FAR Case 92-18]

Federal Acquisition Regulation; Cost Accounting Standards

Correction

In correction document 92-20667 appearing on page 43495 in the issue of Monday, August 31, 1992, in the second column, "30.602-1" should read "30.602-2" and in amendatory instruction 9., in the second line, "30.602-1" should read "30.602-2".

BILLING CODE 1505-01-D 1

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 74-09; Notice 27]

RIN 2127-AD45

Child Restraint Systems

Correction

In rule document 92-21717 beginning on page 41423 in the issue of Thursday, September 10, 1992, make the following corrections:

§ 571.213 [Corrected]

1. On page 41427, in the third column, in the paragraph beginning with "S5.1.3", in the fourth line, "application" should read "applicable".

2. On page 41428, in the first column, in the fourth full paragraph, "S.1.1.5" should read "S6.1.1.5".

BILLING CODE 1505-01-D

FAST TRACK

Thursday
October 1, 1992

Part II

Department of Transportation

Research and Special Programs
Administration

Federal Preemption of State, Local, and
Indian Tribe Requirements Under the
Hazardous Materials Transportation Act;
Notice

DEPARTMENT OF TRANSPORTATION

[Notice No. 92-10]

Federal Preemption of State, Local, and Indian Tribe Requirements Under the Hazardous Materials Transportation Act**AGENCY:** Research and Special Programs Administration (RSPA), DOT.**ACTION:** Notice.

SUMMARY: This Notice publishes a subject-matter index and table summarizing RSPA inconsistency rulings, non-preemption determinations, and a waiver of preemption determination, and all court decisions which discuss preemption issues under the Hazardous Materials Transportation Act (HMTA) (Pub. L. 93-633), 88 Stat. 2156 (1975), as amended by the Hazardous Materials Transportation Uniform Safety Act (HMTUSA) (Pub. L. 101-615, 104 Stat. 3244 (1990)), and the Hazardous Materials Regulations (HMR) (49 CFR parts 171-180) issued thereunder. With its passage in 1990, HMTUSA significantly amended HMTA, particularly in the area of Federal preemption of State, local government, and Indian tribe requirements. The publication of this information is intended to facilitate better public understanding and awareness of the judicial and administrative precedents concerning preemption under HMTA. It may be particularly useful to State, local, or tribal officials considering the regulation or restriction of hazardous materials transportation.

FOR FURTHER INFORMATION CONTACT: Edward H. Bonekemper, III, Assistant Chief Counsel for Hazardous Materials Safety, Office of the Chief Counsel, Research and Special Programs Administration, Department of Transportation, Washington, DC 20590-0001 [Tel. (202) 366-4400].

SUPPLEMENTARY INFORMATION: The HMTA generally preempts "any requirement, of a State or political subdivision thereof or Indian tribe" when compliance with both the local regulation and HMR "is not possible", when the local regulation "creates an obstacle to the accomplishment and execution" of the HMTA or the HMR, or when the local regulation concerns one or more of five "covered subjects" and the local regulation is not "substantively the same" and HMTA or HMR. 49 app. U.S.C. 1804(a), 1811(a). The "dual compliance" (or "impossibility") test and the "obstacle" test were the regulatory criteria used by RSPA and the courts even prior to 1990;

HMTUSA's passage gave them statutory status.

These express preemption provisions make it evident that Congress did not intend that the HMTA and the HMR completely occupy the field of transportation so as to preclude all State, local, or Indian tribe action. However, Congress did give the Department of Transportation (DOT) the authority to promulgate uniform national standards, and Congress intended, to the extent possible, to make State, local, and Indian tribe action unnecessary. HMR's comprehensiveness severely restricts the scope of historically permissible state, local, and Indian tribe activity.

Section 1804(a)(4) preempts any provision, not otherwise authorized by Federal law, concerning a "covered subject" which is not "substantively the same" as any HMTA or HMR provision. "Covered subjects" are the: (1) Designation, description, and classification of hazardous materials; (2) packing, repacking, handling, labeling, marking, and placarding of hazardous materials; (3) preparation, execution, and use of shipping documents pertaining to hazardous materials and requirements respecting the number, content, and placement of such documents; (4) written notification, recording, and reporting of the unintentional release in transportation of hazardous materials; and (5) design, manufacture, fabrication, marking, maintenance, reconditioning, repair, or testing of a package or container which is represented, marked, certified, or sold as qualified for use in the transportation of hazardous materials.

In these five covered subject areas, national uniformity is critical. In those areas, DOT has determined what requirements are necessary for the safe transportation of hazardous materials. Any additional requirements in excess of the Federal requirements would not be "substantively the same" and would be preempted. Therefore, "substantively the same" is defined in the HMR to mean that the non-Federal requirement conforms in every significant respect to the Federal requirement. Editorial and other similar *de minimis* changes are permitted. 49 CFR 107.202, 57 FR 20428 (May 13, 1992).

Section 1804(b)(4) provides that, beginning two years after the issuance of Federal highway routing standards, State and Indian tribe highway routing designations, limitations, and requirements relating to hazardous materials will be preempted unless they meet Federal procedural and substantive requirements. The Federal Highway Administration will issue

regulations and preemption determinations on highway routing of hazardous materials. 49 CFR 1.48(ii), 56 FR 31343 (July 10, 1991).

In addition, section 1819 states that, after DOT enacts regulations with regard to motor carrier registration forms for states that register persons who transport hazardous materials by motor vehicle, "no State shall establish, maintain, or enforce any requirement which relates to the subject matter of such regulation unless such requirement is the same as such regulation."

The HMTA also provides that the Secretary of Transportation (Secretary) may waive preemption of a State, local, or Indian tribe regulation, in response to an application that "acknowledges" preemption, upon a determination that the State, local, or Indian tribe requirement: "(1) Affords an equal or greater level of protection to the public than is afforded by the requirements of [the HMTA] or the regulations issued under [the HMTA], and (2) does not unreasonably burden commerce." 49 app. U.S.C. 1811(d).

The Secretary delegated to RSPA the authority to decide applications for a determination of preemption and for a waiver of preemption, except for those concerning highway routing, which were delegated to the Federal Highway Administration. 49 CFR 1.53(b); 56 FR 31343 (July 10, 1991). RSPA's procedures for deciding applications for preemption determinations and waiver of preemption determinations are set forth at 49 CFR 107.201-107.227 (including amendments of February 28, 1991 (56 FR 8616), April 17, 1991 (56 FR 15510), and May 13, 1992 (57 FR 20424)).

Any person "aggrieved" by RSPA's decision on an application for a preemption determination or waiver may file a petition for reconsideration. 49 CFR 107.223(a). A party to a waiver of preemption proceeding may also seek judicial review of the Secretary's decision "by the appropriate district court of the United States." 49 app. U.S.C. 1811(e).

Prior to HMTUSA, Congress had utilized a more general preemption standard ("inconsistent"). Only the question of statutory preemption under the HMTA was considered in DOT's inconsistency rulings. A court might have found a non-Federal requirement preempted for other reasons, such as statutory preemption under another Federal statute, preemption under State law, or preemption by the Commerce Clause and the Supremacy Clause of the U.S. Constitution because of an undue burden on interstate commerce. However, RSPA did not make such

determinations in an inconsistency ruling proceeding. It had incorporated into its procedures the dual compliance/impossibility and obstacle tests for determining whether a State or local requirement was consistent with, and thus not preempted by, HMTA. These tests were based upon and supported by U.S. Supreme Court decisions on preemption, including *Hines v. Davidowitz*, 312 U.S. 52 (1941); *Florida Lime & Avocado Growers, Inc. v. Paul*, 373 U.S. 132 (1963); and *Ray v. Atlantic Richfield Co.*, 435 U.S. 151 (1978).

All of RSPA's inconsistency rulings, its non-preemption determination, and its waiver of preemption determination (including all relevant Federal Register citations) are summarized in a detailed table accompanying this Notice; those rulings and determinations also are summarized in the index accompanying this Notice. In contrast to DOT's advisory inconsistency rulings, its preemption determinations and waiver of preemption determinations are legally binding on parties and affected governments unless reversed on judicial review. Court decisions on HMTA preemption issues are legally binding upon parties to those cases and may constitute binding precedents within the geographical area of each court's jurisdiction. Relevant opinions, published and unpublished, are summarized in the index accompanying this Notice.

Issued in Washington, DC on September 23, 1992, under authority delegated in 49 CFR part 106, appendix A.

Alan I. Roberts,

Associate Administrator for Hazardous Materials Safety.

Index to Preemption of State and Local Laws and Regulations Under the Hazardous Materials Transportation Act (HMTA)

(49 App. U.S.C. 1801-1819)

The following is an alphabetized subject matter index of issues arising under the preemption provisions of the HMTA. This index summarizes the implementation of the HMTA's preemption provisions by DOT and the courts.

Abbreviations Used in this Document

CFR—Code of Federal Regulations

DOT—U.S. Department of

Transportation

FR—Federal Register

HM-XXX—Hazardous Materials

Regulations Docket of RSPA (e.g., HM-181)

HMR—Hazardous Materials

Regulations (49 CFR parts 171-180) issued by DOT under HMTA

HMTA—Hazardous Materials Transportation Act, 49 app. U.S.C. 1801-1819.

HMTUSA—Hazardous Materials Transportation Uniform Safety Act of 1990, Public Law 101-615

HRCQ—Highway route controlled quantities (of RAM)

IR-XX—Inconsistency Ruling issued by DOT (e.g., IR-18)

IR-XX(A)—Decision on Appeal re Inconsistency Ruling IR-XX (e.g., IR-18(A))

IRA-XX—Inconsistency Ruling Application filed with DOT (e.g., IRA-44)

LNG—Liquified natural gas

LPG—Liquefied petroleum gas

"Nine-pack"—Group of nine inconsistency rulings (*IR-7 through *IR-15) issued by RSPA on 11/27/84 (49 FR 46632 *et seq.*)

NRC—Nuclear Regulatory Commission

OHMS—Office of Hazardous Materials Safety, RSPA

RAM—Radioactive materials

RSPA—Research and Special Programs Administration, DOT

An asterisk (*) denotes a case, IR or other provision involving only RAM.

A cross-hatch (#) denotes a case, IR or other provision involving both RAM and other hazardous materials.

Accident/Incident Reporting Requirements (Also see "covered subjects" discussion on pp. 1-2.)

- Requirements for immediate, oral accident/incident reports for emergency response purposes generally are consistent. IR-2; IR-3; #IR-28; #IR-31; #IR-32; *National Tank Truck Carriers, Inc. v. Burke*, 535 F. Supp. 509 (D.R.I. 1982), *aff'd*, 698 F.2d 559 (1st Cir. 1983).

- Incident reporting requirements concerning irradiated reactor fuel incidents are inconsistent because of redundancy and possible conflict with NRC rules incorporated into HMR. *IR-8, #IR-28; IR-32. However, such requirements may be consistent where they are clear and not in conflict with the NRC rule (incorporated into the HMR) requiring shippers to arrange with local law enforcement agencies for emergency response. #IR-31.

- Requirements for written accident/incident reports are redundant with Federal requirements, tend to undercut compliance with them, and thus are inconsistent. IR-2; IR-3; IR-3(A); #IR-31. See "covered subjects" discussion on pp. 1-2.

Advance Notice—See "Notice Requirements" and "Delays of Transportation."

Approval Requirements (Also see "Permit Requirements.")

- Transportation approval requirements identical to Federal are consistent. *IR-14; *IR-15.

- Transportation approval requirements different from Federal are inconsistent. *IR-8; *IR-8(A); *IR-10; *IR-11; *IR-12; *IR-13; *IR-15; *IR-15(A); #IR-19; #IR-19(A).

- Transportation approval requirements may not include inconsistent provisions: "A requirement for compliance with an inconsistent provision is itself inconsistent." *IR-8(A), 52 FR 13000, 13006.

- Unfettered discretion to approve or disapprove transportation is inconsistent. *IR-8(A); *IR-15(A); *IR-18; #IR-20.

- "In light of the virtually total occupation of the field of radioactive materials transportation by the HMTA and the HMR, State or local provisions requiring approval or authorizing conditions to be established for the transportation of radioactive materials (other than compliance with Federal regulations) constitute unauthorized prior restraints on shipments that are presumptively safe based on their compliance with Federal regulations and are inconsistent with the HMTA and the HMR." *IR-15(A), 52 FR 13062, 13063; quoted and followed, #IR-19.

Approvals—See "Exemptions and Approvals."

Bans on Hazardous Materials

Transportation—See "Prohibitions of Hazardous Materials Transportation."

Bonding Requirements—See "Insurance or Indemnification Requirements."

Certification Requirements—See "Information/Documentation Requirements", "Packaging Design and Construction Requirements" and "Shipping Paper Requirements."

Civil Penalties—See "Penalties."

Classification of Hazardous Materials—See "covered subjects" discussion on pp. 1-2.

Communication Requirements

- Requirement that motor vehicles carrying LPG or natural gas use two-way radio communications is consistent. IR-2.

- RAM communications requirements which are different from, or authorized to be different from, Federal requirements are inconsistent. *IR-8; *IR-8(A).

- City requirements that vehicles carrying hazardous waste have and monitor CB radio is consistent except as to radioactive materials. #IR-32.

Confidentiality Requirement

• Requirements to keep RAM shipment information confidential which are same as Federal are consistent. *IR-8; *IR-15.

Container Design and Certification Requirements—See "covered subjects" discussion on pp. 1-2 and "Packaging Design and Construction Requirements." **Curfew**—See "Time Restrictions."

Definitions—See "Hazard Class and Hazardous Materials Definitions."

Delays of Transportation (Also see "Routing Requirements" and "Time Restrictions.")

• State and local requirements likely to cause unreasonable transportation delays are inconsistent. IR-2; IR-3; IR-3(A); IR-6; IR-16; #IR-19; #IR-19(A); #IR-20; *IR-21; *IR-21(A); IR-22; #IR-28; *IR-30.

• "The manifest purpose of the HMTA and the Hazardous Materials Regulations is safety in the transportation of hazardous materials. Delay in such transportation is incongruous with safe transportation." IR-2, 44 FR 75566, 75571.

• "The mere threat of delay may redirect commercial hazardous materials traffic into other jurisdictions that may not be aware of or prepared for a sudden, possibly permanent, change in traffic patterns." IR-3, 46 FR 18919, 18921, #IR-20; *IR-21(A).

• Local highway routing requirements for hazardous materials through-traffic not based on complete safety analysis and consultations with all affected jurisdictions are inconsistent with § 177.853(a) of the HMR. IR-3; IR-3(A); IR-23.

• "Since safety risks are 'inherent in the transportation of hazardous materials in commerce' [49 U.S.C. 1801], an important aspect of transportation safety is that transit time be minimized. This precept has been incorporated in the HMR at 49 CFR 177.853, which directs highway shipments to proceed without unnecessary delay, and at 49 CFR 174.14, which directs rail shipments to be expedited within a stated time frame." IR-8, 49 FR 760, 765; see also *IR-16, 50 FR 20872, 20879; quoted, #IR-19, 52 FR 24404, 24409.

• Acute delays at State border inevitably resulting from State imposing documentary prerequisites upon non-domiciliaries for transport of hazardous materials render those requirements inconsistent with 49 CFR 177.853. #IR-26.

• State fees for hazardous materials transport not causing unnecessary transportation delays are consistent. *IR-17; *IR-17(A); *IR-27; # *New Hampshire Motor Transport Ass'n v.*

Flynn, 751 F.2d 43 (1st Cir. 1984); **Colorado Pub. Utilities Comm'n v. Harmon*, No. 88-Z-1524 (D. Colo. 1989), *rev'd on other grounds*, 951 F.2d 1571 (10th Cir. 1991).

• Time-consuming state permitting process with no definite decision date creates possibility of transportation delay and thus is inconsistent. #IR-19, #IR-19(A); *IR-21; *IR-21(A).

• Two-hour advance approval requirement not shown to serve any purpose causes delay and is inconsistent. #IR-20; *IR-21; *IR-21(A).

• City 20-car limitation on unloaded and loaded butane railcars at a site will cause delays and temporary storage elsewhere and thus is inconsistent. *Consolidated Rail Corp. v. City of Bayonne*, 724 F. Supp. 320 (D.N.J. 1989).

"The obvious conclusion is that the more frequently hazardous material is handled during transportation, the greater the risk of mishap. Accordingly, these [HMR] provisions require that the material reach its destination as quickly as possible, with the least amount of handling and temporary storage." *Ibid.* at 330.

• Additional switching, handling and delays of hazardous materials caused by state requirement for caboose on certain trains carrying hazardous materials create obstacle, and requirement is inconsistent. *Missouri Pacific R.R. Co. v. Railroad Commission of Texas*, 671 F. Supp. 466 (W.D. Tex. 1987), *aff'd on other grounds*, 850 F.2d 264 (5th Cir. 1988), *cert. denied*, 109 S. Ct. 794 (1989).

• State statute providing three days for a permit issuance decision re each RAM shipment is inconsistent. *IR-21; *IR-21(A). Local ordinance requiring 45 days' prenotification of RAM shipments is inconsistent. *IR-30. Prohibition on permit applications more than one day prior to scheduled shipment also is inconsistent. *IR-21; *IR-21(A).

• RAM requirements unnecessarily delaying transportation are inconsistent. *IR-8(A); *IR-18; *IR-18(A); *IR-21; *IR-21(A); #IR-26, *IR-30.

• City tank truck regulations causing delays for cargo transfers, vehicle permit inspections and obtaining specifications, certifications and affidavits, are inconsistent. IR-22.

• City truck regulations, requiring bulk gases to be transported around City unless no practical alternative route exists and the fire commission authorizes trip, promote safety, do not cause "unnecessary delay" under 49 CFR 177.853(a), and thus are consistent. *City of New York v. Ritter Transp., Inc.*, 515 F. Supp. 663 (S.D. N.Y. 1981), *aff'd*, *National Tank Truck Carriers, Inc. v. City of New York*, 677 F.2d 270 (2d Cir. 1982).

• "While states do have a role in effectuating the safe transportation of radioactive materials, it does not follow that they have unfettered discretion to take actions which have the effect of restricting or delaying transportation being conducted in compliance with Federal law." *IR-8(A), 52 FR 13000 at 13003; quoted in #IR-19, 52 FR 24404, 24409.

Designation/Description of Hazardous Materials—See "covered subjects" discussion on pp. 1-2.

Documentation—See "Information/Documentation Requirements."

Drivers' Licenses—See "Information/Documentation Requirements" and "Training Requirements."

Effect of Requirements (Also see "Language of Requirements.")

• " * * * it is the effect, both actual and potential, not the intent of state or local rules which determines their consistency with the HMTA and the HMR." IR-8(A), 52 FR 13000, 13003.

Emergency Response

• "Although the Federal Government can regulate in order to avert situations where emergency response is necessary, and can aid in local and state planning and preparation, when an accident does occur, response is, of necessity, a local responsibility." IR-2, 44 FR 75565, 75568.

• Inadequacy of emergency response capabilities cannot provide basis for prohibiting transportation. *IR-18; *IR-18(A). Thus, non-Federal emergency response-related information requirements, such as a cleanup plan or vehicle equipment failure plan, cannot be used as a prerequisite to hazardous materials transportation. #IR-19; *IR-27; #IR-28. **Colorado Pub. Utilities Comm'n v. Harmon*, 951 F.2d 1571 (10th Cir. 1991), *reversing* No. 88-Z-1524 (D. Colo. 1989).

• " * * * RSPA's emergency response information requirements for hazardous materials transportation, including the loading, unloading, or storage incidental to such transportation exclusively occupy that field. Therefore, state and local requirements not identical to these HMR provisions will cause confusion concerning the nature of such requirements, undermine compliance with the HMR requirements, constitute obstacles to the implementation of these provisions, and thus be inconsistent and preempted." #IR-28.

Emergency Requirements (Also see "Loading and Unloading")

Enforcement and Violations Provisions (Also see "Penalties.")

• Enforcement and violations provisions (such as criminal or civil sanctions, private attorney general

lawsuits, injunctions, cease-and-desist orders, cut-off of city services, etc.) are consistent with HMTA and HMR if used to enforce consistent provisions. *IR-3; #IR-31.

• Enforcement and violations provisions (such as criminal or civil sanctions, private attorney general lawsuits, injunctions, cease-and-desist orders, cut-off of city services, etc.) are inconsistent with HMTA and HMR if used to enforce inconsistent provisions. *IR-18; *IR-18(A); *IR-30; #IR-31.

Equipment Requirements (Also see "covered subjects" discussion on pp. 1-2 and "Packaging Design and Construction Requirements.")

• Cargo containment-related equipment requirements, including those vesting discretionary approval authority in state or local officials, are inconsistent. IR-2; *IR-8; *IR-8(A); *IR-15; IR-22; *Nat'l Paint & Coatings Ass'n. et al. v. City of New York*, Index No. CV 84-4525 (ERK) (E.D. N.Y. Oct. 18, 1991).

• "In summary, RSPA, OHMT and their predecessor agencies have established in a series of inconsistency rulings issued during the past decade the principle that the HMR provisions concerning hazardous materials transportation cargo containment systems, equipment, accessories and packaging, and the certification, marking, testing and permitting of same, have fully occupied that regulatory field. Those subjects are the exclusive province of the Federal Government. As a result, state or local requirements concerning those subjects detract from and create confusion concerning the Federal requirements, are inconsistent with the HMTA and the HMR, and, therefore, are preempted under section 112(a) of the HMTA. Similarly, these rulings have demonstrated RSPA's position that permitting systems and information or documentation requirements relating to or containing such requirements likewise are inconsistent with the HMTA and the HMR and, therefore, preempted." IR-22, 52 FR 46574, 46582.

• "Headlights on" requirement is consistent. IR-2; IR-3; #IR-32 (with reasonable notice); *National Tank Truck Carriers, Inc. v. Burke*, 535 F. Supp. 509 (D.R.I. 1982), *aff'd*, 698 F.2d 559 (1st Cir. 1983); * *Colorado Pub. Utilities Comm'n v. Harmon*, No. 88-Z-1524 (D. Colo. 1989), *rev'd on other grounds*, 951 F.2d 1571 (10th Cir. 1991).

• RAM transportation requirement for mobile telephone equipped with multiple channels is consistent. * *Colorado Pub. Utilities Comm'n v. Harmon*, No. 88-Z-1524 (D. Colo. 1989), *rev'd on other grounds*, 951 F.2d 1571 (10th Cir. 1991).

• State requirement for caboose on certain trains carrying hazardous materials would cause additional switching, handling and delays of hazardous materials and thus is inconsistent. *Missouri Pacific RR Co. v. Railroad Commission of Texas*, *supra*.

• Requirement for illuminated rear bumper signs conflicts with DOT lighting regulations and would divert attention from DOT placards and thus is inconsistent. IR-2.

• Requirement for frangible shank-type lock on tank trailers carrying LNG or LPG is inconsistent since DOT comprehensively regulates cargo tank containment. IR-2.

• City 20-car limitation on unloaded or loaded butane railcars at a site is inconsistent. *Consolidated Rail Corp. v. City of Bayonne*, 724 F. Supp. 320 (D. N.J. 1989).

• "... a state or local rule which grants an official discretionary authority to set equipment requirements for carriers engaged in interstate commerce impedes the Congressional purposes of increased safety and regulatory uniformity underlying the HMTA." IR-8(A), 52 FR 13000, 13003.

• Vehicle equipment requirements which might conflict with those provisions of the Federal Motor Carrier Safety Regulations (FMCSR), 49 CFR parts 390-397, which are incorporated in the HMR only by 49 CFR 177.804, must only meet the "dual compliance" test, not the "obstacle" test. IR-3; 43 FR 4858 (Feb. 6, 1978); *National Paint & Coatings Ass'n, Inc. v. City of New York*, No. CV-4525 (ERK) (E.D. N.Y. 1985); 52 FR 18668-9 (May 18, 1987); IR-22. However, those FMCSR requirements specifically incorporated into the HMR by other HMR regulations must meet both tests. IR-22.

• Waiver of preemption denied with regard to tank truck design and capacity requirements for flammable and combustible liquids and gases, because they do not provide an equal level or greater level of protection to the public as the Federal requirements, and they unreasonably burden commerce. In this specific case, there is no evidence that local design requirements and capacity limits increase the level of safety by a sufficient amount to offset an expected reduction in deaths, injuries, and property damage, when larger-capacity trucks allow fewer trips. WPD-1.

Escort Requirements

• RAM transportation front and rear escort requirements identical to DOT/NRC standards are consistent, *IR-14, as are notice requirements facilitating escorts under the DOT/NRC requirements. *IR-17.

• Requirements for additional or special escorts re RAM transportation not required by DOT/NRC regulations are inconsistent, *IR-11; *IR-13; *IR-15(A); *IR-18; *IR-18(A); *IR-21.

• Requirements for carriers to delay for escorts re RAM transportation other than those in NRC standards are inconsistent. *IR-15.

• Escort requirements linked to inconsistent equipment requirements are inconsistent. IR-22; IR-23.

• Temporary restraining order and later a permanent injunction were imposed against State escort requirement for chlorine and oleum shipments, because of the high degree of likelihood that such a requirement would not be upheld upon court review. *Chlorine Institute v. California Highway Patrol et al.*, No. CIV-S-92 396 DFL/JFM (E.D. Ca. 1992).

Exemptions and Approvals

• "A state must implicitly or explicitly recognize the validity of OHMT's exemptions and approvals; a state may not establish its own exemptions and approvals program." #IR-31, 55 FR 25572, 25581.

Federal Motor Carrier Safety Regulations (FMCSR)

• 49 CFR parts 390-397 (FMCSR) were not made relevant to HMTA preemption by adoption of 49 CFR 177.804. They are relevant only insofar as specifically incorporated by reference in other HMR provisions. IR-22; IR-23; #IR-32.

Federal Requirements (Also see "Standing.")

• Only conflicts with Federal requirements under the HMTA and the HMR are cognizable in inconsistency proceedings (not Commerce Clause issues or preemption issues under other Federal statutes or regulations), but OHMT may address these HMTA/HMR conflict issues even if not clearly raised in the application. IR-17(A).

• Absence of a Federal regulation addressing the same subject as a challenged state or local requirement is not determinative of the issue of that requirement's consistency. *IR-17(A).

• Requiring compliance with Federal requirements is consistent. IR-3; *IR-7.

• State or local requirements identical to Federal ones are consistent. *IR-8.

• Adequacy of Federal requirements is irrelevant. *IR-8(A).

Fee Requirements

• Fees on hazardous materials transportation must be equitable and used for purposes related to hazardous materials transportation, including enforcement and planning, development

and maintenance of emergency response capability. 49 app. U.S.C. 1811(b).

- Reasonable fees to fund consistent activities are consistent. *IR-17; *IR-17(A); *IR-27; #*New Hampshire Motor Transport Ass'n v. Flynn*, 751 F.2d 43 (1st Cir. 1984);

- *Colorado Pub. Utilities Comm'n v. Harmon*, No. 88-Z-1524 (D. Colo. 1989), *rev'd on other grounds*, 951 F.2d 1571 (10th Cir. 1991).

- Fees which are unreasonably high or are related to inconsistent activities are inconsistent. *IR-11; *IR-13; *IR-15; *IR-18(A); #IR-19; *IR-27; *IR-30; #*New Hampshire Motor Transport Ass'n v. Flynn*, *supra*.

- State's \$1,000 per cask fee for spent nuclear fuel transportation to fund inspection, enforcement, State escorts and emergency response, not related to inconsistent provisions, and not causing transportation delays or diversions is consistent. *IR-17; *IR-17(A). Similar State RAM shipment fees are consistent. *IR-27.

- State's \$25/year or \$15/trip fee for hazardous materials transportation to fund transportation and environmental programs and related to a minimal delay licensing system is consistent. #*New Hampshire Motor Transport Ass'n v. Flynn*, *supra*.

- State's \$1,000 per shipment fee for spent nuclear fuel transportation apparently to fund inconsistent state monitoring activities is inconsistent. *IR-15. State's RAM permit fee is inconsistent. *IR-27.

- State's \$500 annual permit fee and \$200 shipment fee for RAM transportation are consistent. **Colorado Pub. Utilities Comm'n v. Harmon*, No. 88-Z-1524 (D. Colo. 1989), *rev'd on other grounds*, 951 F.2d 1571 (10th Cir. 1991).

- State preliminarily enjoined from depositing the proceeds of a \$25 per truck annual hazardous materials transportation license fee and a related \$15 single trip fee into the State treasury, and ordered to place these monies in an escrow account pending final disposition of court case challenging validity of the fees under the Commerce clause, because plaintiffs established the likelihood of their success on the merits. *American Trucking Associations et al. v. New Hampshire*, No. 89-E-00405-B (Sup. Ct. NH 1989).

- State's hazardous materials license fee of \$25 per vehicle or \$15 per trip per vehicle found to be a "flat tax", failed Commerce clause "internal consistency" test as required by *Armco v. Hardesty* (467 U.S. 644 (1994)), and therefore was an undue burden on interstate commerce. *American Trucking Ass'n v.*

Diamond, et al., No. CV-90-195 (Sup. Ct. Maine 1990).

- The imposition and use of an "equitable fee" as part of a City's permit and inspection system for purposes related to the transportation of hazardous materials is not preempted. WPD-1.

Findings

- Findings regarding hazardous materials transportation are not "requirements" subject to preemption under the HMTA. *IR-18.

Forms—See "Motor Carrier Registration and Permitting Forms."

Handling of Hazardous Materials—See "covered subjects" discussion on pp. 1-2.

Hazard Class and Hazardous Materials Definitions (Also see "covered subjects" discussion on pp. 1-2.)

- State and local hazard class and hazardous materials definitions differing from those in the HMR and used to regulate hazardous materials transportation are inconsistent because the Federal role is exclusive. *IR-18; *IR-18(A); #IR-19; #IR-19(A); #IR-20; *IR-21; #IR-26; #IR-28; IR-29; *IR-30; #IR-31; #IR-32; *Missouri Pacific R.R. Co. v. Railroad Commission of Texas*, *supra*.

- State and local hazardous materials definitions and classifications which result in regulating the transportation, including loading, unloading or storage incidental thereto, of more, fewer or different hazardous materials than the HMR are obstacles to uniformity in transportation regulation and thus are inconsistent. IR-5; IR-6; #IR-28; IR-29; #IR-31; #IR-32.

- Application of state requirements to selected DOT hazardous materials can contribute to the overall inconsistency of a series of interrelated regulations. #IR-19.

- "The key to hazardous materials transportation safety is precise communication of risk. The proliferation of differing State and local systems of hazard classification is antithetical to a uniform, comprehensive system of hazardous materials transportation safety regulations." IR-6, 48 FR 760, 764.

- "State government or political subdivisions may not regulate—let alone prohibit—the transportation or radioactive or other hazardous materials specifically excepted from regulation under the HMTA or the HMR. The determination of what hazardous materials may or may not be regulated in the transportation field is the essence of DOT's exclusive authority to define and classify hazardous materials." #IR-20, 52 FR 24396, 24401.

- "Radioactive Material" definitions different from HMR definitions are inconsistent. *IR-8; *IR-12; *IR-15; *IR-16; *IR-18; *IR-21; *IR-30; **Northern States Power Co. v. Prairie Island Mdewakanton Sioux Indian Community*, Civ. 3-9-783 (D. Minn., Dec. 23, 1991) (enjoining enforcement of ordinance), *appeal docketed* (8th Cir. 1992). But essentially identical definitions are consistent. *IR-18.

- "If every jurisdiction were to assign additional requirements on the basis of independently created and variously named subgroups of radioactive materials, the resulting confusion of regulatory requirements would lead directly to the increased likelihood of reduced compliance with the HMR and subsequent decrease in public safety." *IR-12, 49 FR 46650, 46651.

- City definitions of RAM and flammable materials differed from HMTA definitions and thus were preempted and their use enjoined. *Union Pac. R.R. Co. v. City of Las Vegas*, No. LV-85-932 HDM (D. Nev. 1986).

- City definition of "hazardous waste" consisting of ambiguous and subjective standards and including non-HMR materials is inconsistent. #IR-32.

- *Hazard Warning Requirements*—See "Placarding and Other Hazard Warning Requirements."

- *Hazardous Substances and Wastes* (Also see "covered subjects" discussion on pp. 1-2.)

- Dicta in footnotes indicate that State's hazardous substances transportation regulations appeared to be valid under the HMTA because they regulated only transportation from points in Maryland [but decision overlooked RSPA's 1980 amendment of 49 CFR 171.1 applying HMR to intrastate transportation of hazardous substances and wastes]. *Browning-Ferris, Inc. v. Anne Arundel County, Maryland*, 292 Md. 136, 438 A.2d 269, 274 (1981).

- City requirement that driver transporting hazardous waste carry a hazardous waste manifest is same as HMR and is consistent. #IR-32.

- City definition of hazardous waste consisting of ambiguous and subjective standards and including non-HMR materials is inconsistent. #IR-32.

- City definition of hazardous gases different from that in HMR does not afford as much protection to the public and unreasonably burdens commerce, and therefore waiver of preemption is denied. WPD-1.

- *Incident Reporting*—See "Accident/ Incident Reporting Requirements."

Inconsistency Rulings

• Local government need not obtain an RSPA inconsistency ruling before enforcing a local requirement. *National Tank Truck Carriers, Inc. v. Burke*, 608 F.2d 819, 821-2 (1st Cir. 1979); *City of New York v. Ritter Transportation, Inc.*, 515 F. Supp. 663, 668 (S.D. N.Y. 1981), *aff'd sub nom. National Tank Truck Carriers, Inc. v. City of New York*, 677 F.2d 270 (2d Cir. 1982); *Seaboard System R.R., Inc. v. Bankster, et al.*, 254 Ga. 455, 330 S.E. 2d 700, 705 (1985). *Contra* (based on doctrine of primary jurisdiction): *Consolidated Rail Corp. v. City of Dover*, 450 F. Supp. 966, 974 (D. Del. 1978).

• "Because the DOT authored the HMR, its determination of what constitutes an obstacle to the accomplishment or execution of those regulations is deserving of substantial deference." *Southern Pac. Transp. Co. v. Public Serv. Comm'n of Nevada*, 909 F.2d 352, 359 (9th Cir. 1990).

• DOT improperly issued an FR policy statement which had the effect of determining that Ohio's radioactive materials prenotification requirement was inconsistent with the HMTA—without affording Ohio the protections of the IR regulations. *State of Ohio v. U.S. Dept. of Transportation*, No. C81-1394 (N.D. Ohio Oct. 5, 1989).

Incorporation by Reference

• NRC regulations incorporated by reference in HMR provide basis for consistency comparison with state and local requirements. *IR-8(A).

• DOT encourages State adoption or incorporation by reference of the HMR as State law—and enforcement thereof. *IR-17; #IR-19; #IR-31; WPD-1.

• State and local requirements which incorporate by reference specific superseded Federal regulations are inconsistent. *IR-8; *IR-8(A); *IR-18. However, state and local governments may incorporate by reference specific CFR volumes of the HMR for a reasonable time (up to two years) after their publication, although a later-published HMR rule would control over an inconsistent state or local requirement. #IR-19.

• Indemnification Requirements—See "Insurance or Indemnification Requirements."

Indian Tribe Requirements

÷ HMTA likely preempts significant portions (if not all) of an Indian tribe ordinance requiring license for transport of "radioactive substances," broadly defining those substances, requiring 180-day advance application and a \$1,000 fee, and providing broad discretion to

Tribal Council whether to issue or deny the license. *Northern States Power Co. v. Prairie Island Mdewakanton Sioux Indian Community*, Civ. 3-91-783 (D. Minn. Dec. 23, 1991) (enjoining enforcement of ordinance), *appeal docketed* (8th Cir. Nos. 92-1240, 92-1476 1992). However, another court has held that Indian tribes are immune from suit in U.S. district court for actions allegedly preempted by the HMTA. *Public Serv. Co. of Colorado v. Shoshone-Bannock Tribes* (D. Idaho, No. 91-440-EJL, Jan. 9, 1992), *appeal docketed* (9th Cir. No. 92-35206 1992).

• Information/Documentation Requirements (Also see "covered subjects" discussion at pp. 1-2 and "Shipping Paper Requirements," "Notice Requirements," and "Placarding and Other Warning Requirements.")

• Requirements for information or documentation in excess of Federal requirements create potential delay, constitute an obstacle to execution of the HMTA and the HMR, and thus are inconsistent. IR-2; IR-6; *IR-8; *IR-8(A); *IR-15; *IR-15(A); *IR-18; *IR-18(A); #IR-19; #IR19(A); *IR-21; #IR-26; *IR-27; #IR-28; *IR-30; *Chem-Nuclear Systems, Inc. v. City of Missoula*, No. 80-18-M (D. Mont. 1984); #*Southern Pac. Transp. Co. v. Public Serv. Comm'n of Nevada*, 909 F.2d 352 (9th Cir. 1990), *reversing* No. CV-N-86-444-BRT (D. Nev. 1988); *Colorado Pub. Utilities Comm'n v. Harmon*, 951 F.2d 1571 (10th Cir. 1991), *reversing* No. 88-Z-1524 (D. Colo. 1989). There is no *de minimis* exception to the "obstacle" test because thousands of jurisdictions could impose *de minimis* information requirements. *IR-8(A).

• "In summary, the HMTA and HMR provide sufficient information and documentation requirements for the safe transportation of hazardous materials; state and local requirements in excess of them constitute obstacles to implementation of the HMTA and HMR and thus are inconsistent with them." #IR-19, 52 FR 24404 at 24408. Quoted in #IR-28.

• Preliminary injunction was granted against City requirements to have decal and carry copy of permit. *American Trucking Ass'n, Inc. v. City of Boston*, No. 81-628-MA, Fed. Carr. Cas. ¶82,938 (CCH) (D. Mass. 1981).

• Emergency response-related information requirements cannot be used as a prerequisite to hazardous materials transportation. #IR-19; *IR-27.

• State may require, as prerequisite to motor vehicle transport of hazardous materials, a driver's license or documentary evidence of hazardous materials training from its own

domiciliaries but not from non-domiciliaries—except, on or after April 1, 1992, from non-domiciliaries not having hazardous materials endorsements on their commercial drivers' licenses. #IR-26; #IR-31; #IR-32.

• "DOT and NRC have determined what information and documentation requirements are needed for the safe transportation of radioactive materials, and state and local requirements going beyond them create confusion, impose burdens on transporters, are obstacles to the accomplishment of the HMTA's objectives, and thus are inconsistent." *IR-8(A), 52 FR 13000, 130004; quoted in *IR-27; quoted and applied to non-RAM in #IR-19, 52 FR 24404, 24408; see also *IR-15(A).

• "No matter what the form, any state or local requirement that asks for an additional piece of paper that supplies the same information as is required to be on the DOT shipping paper would be inconsistent with the requirements contained in the Hazardous Materials Regulations." IR-2, 44 FR 75566, 75571. Requirements for multiple submissions of same information are inconsistent. *IR-8(A).

• Requirements for RAM transportation route plans or other shipment-specific documentation or information are inconsistent. *IR-21. Also inconsistent are requirements for RAM shipment information on possible alternate routes, proposed means of conveyance, estimated date and time of departure, emergency response or recovery plans, attestations re safety inspections, certification of compliance with laws and regulations (latter being same as required on DOT shipping papers), telephone numbers, inspection reports, state permits, proof of driver training, proof of insurance, and equipment replacement or repair plans. *IR-8(A); *IR-15; *IR-15(A); *IR-27; *Colorado Pub. Utilities Comm'n v. Harmon*, 951 F.2d 1571 (10th Cir. 1991), *reversing* No. 88-Z-1524 (D. Colo. 1989).

• RAM information requirements identical to NRC's are consistent, but requirement for submission to state of NRC approvals and licenses is inconsistent. *IR-8; *IR-8(A); *IR-15; *IR-15(A).

• Requirement to carry proof of insurance is inconsistent. *IR-27; #IR-32; *Colorado Pub. Utilities Comm'n v. Harmon*, 951 F.2d 1571 (10th Cir. 1991), *reversing* No. 88-Z-1524 (D. Colo. 1989).

• Mere requirement in permit application of some information required on DOT shipping papers may not require preemption. Dicta in *National Tank Truck Carriers, Inc. v.*

Burke, 535 F. Supp. 509 (D. R.I. 1982), *aff'd*, 698 F.2d 559 (1st Cir. 1983).

• "The Secretary's regulations contain hundreds of information and documentation requirements, all of which have been established by the Secretary to ensure the health and safety of citizens in every jurisdiction. Congress specifically found that additional documentation and information requirements in one jurisdiction create "unreasonable hazards in other jurisdictions" and could confound "shippers and carriers which attempt to comply with multiple and conflicting regulations." 49 U.S.C. app. 1801. Colorado's regulations clearly exceed the information and documentation requirements set forth in the Secretary of Transportation's regulations governing the transportation of radioactive materials. The enactment of separate information and documentation requirements in even a few of the thousands of local jurisdictions across the country would lead to the multiplicitous regulations Congress sought to avoid by enacting the HMTUSA. Because Colorado's regulation forces transporters of hazardous materials to generate and maintain additional documentation and information, we conclude that it is likely to confound shippers and carriers and to increase the potential for hazards in other jurisdictions. Colorado's regulations simply do not further the Federal purpose of promoting safety through uniformity. Therefore, we hold that NT-8 is preempted. * * * In addition to obstructing Congress' objective that safety be achieved through uniformity, the expense of burdensome documentation and information requirements also is contrary to Congress' intent that regulation of hazardous materials transportation be as cost-effective as possible." **Colorado Pub. Utilities Comm'n v. Harmon*, 951 F.2d 1571 (10th Cir. 1991), *reversing* No. 88-Z-1524 (D. Colo. 1989).

Inspection Requirements (Also see "Permit Requirements")

• Inspection requirements relating to Federal and consistent requirements are encouraged by RSPA and are consistent. IR-2; IR-8; IR-15; IR-17; IR-20; IR-27; IR-31; **Colorado Pub. Utilities Comm'n v. Harmon*, No. 88-Z-1524 (D. Colo. 1989), *rev'd on other grounds*, 951 F.2d (10th Cir. 1991).

• Inspection requirements relating to inconsistent requirements are themselves inconsistent. IR-20; IR-21; IR-21(A); IR-27; IR-30; IR-31.

• State may not require carrier to retain inspection report in vehicle. Such an additional documentation

requirement could create confusion and increase hazards. **Colorado Pub.*

Utilities Comm'n v. Harmon, 951 F.2d 1571 (10th Cir. 1991), *reversing* No. 88-Z-1524 (D. Colo. 1989).

• Annual inspections for tank trucks hauling flammable and combustible liquids and compressed gasses, to determine the vehicles' general safety levels, are not preempted. However, waiver of preemption was denied with respect to inspections to enforce vehicles' conformity to local design requirements (truck size and tank design and capacity). WPD-1.

Insurance or Indemnification Requirements

• Hazardous materials transportation indemnification, bonding or insurance requirements differing from Federal requirements are inconsistent. IR-10; IR-11; IR-15; IR-15(A); IR-18; IR-18(A); IR-25; IR-31. (See also IR-13; IR-14.) State may not require proof of insurance meeting the Federal requirements. **Colorado Pub. Utilities Comm'n v. Harmon*, 951 F.2d (10th Cir. 1991), *reversing* No. 88-Z-1524 (D. Colo. 1989).

• The absence of a bonding, insurance, or indemnity requirement in the HMR "is a reflection of OHMT's determination that no such requirement is necessary and that any such requirement imposed at the state or local level is inconsistent with the HMR." IR-25, 54 FR 16308, 16311. "[N]o such requirement is necessary—particularly because 49 CFR 387.7 and 387.9 already require insurance or surety bonds of between \$1,000,000 and \$5,000,000 for motor carriers transporting hazardous wastes, hazardous substances and other hazardous materials." *Ibid*.

• "The indemnification level established through the HMR, coupled with the indemnification provisions of the Price-Anderson Act (42 U.S.C. 2210), provides the exclusive standard for radioactive materials transportation indemnification. They have totally occupied that field, and any state or local bond, insurance or indemnification requirement not identical to the HMR requirement is an obstacle to the accomplishment of the objectives of the HMTA and the HMR." IR-15(A), 52 FR 13062, 13063.

• Requirement to carry proof of insurance is inconsistent. IR-32.

Labeling of Hazardous Materials—See "covered subjects" discussion on pp. 1-2.

Land Use Restrictions

• Regulations which apply only to transportation activities are not types of

non-transportation land use restrictions which might be consistent. IR-19; see IR-16.

Language of Requirements (Also see "Effect of Requirements.")

• Actual language of state and local requirements, rather than later statements of intent, are controlling. IR-8(A), IR-16, IR-19(A), unless there is a demonstrated actual practice to the contrary. IR-17.

Licensing—See "Information/Documentation Requirements."

Loading and Unloading (Also see "covered subjects" discussion on pp. 1-2 and "Smoking limitations".)

• State and local requirements for hazardous materials loading and unloading incidental to transportation (including loading and unloading by consignors and consignees) must be consistent with the HMTA and HMR. Such requirements are inconsistent if they differ from, or add to, the HMR requirements—particularly if they are subjective. IR-19; IR-19(A); IR-28; **Southern Pac. Transp. Co., v. Public Serv. Comm'n of Nevada*, 909 F.2d 352 (9th Cir. 1990), *reversing* No. CV-N-86-444-BRT (D. Nev. 1988).

• Despite DOT's extensive regulation of loading, unloading, transfer and storage incidental to the transportation of hazardous materials, the Nevada regulations require a carrier to obtain an annual permit prior to engaging in these activities within the state of Nevada. The Nevada regulations, thus, create a separate regulatory regime for these activities, fostering confusion and frustrating Congress' goal of developing a uniform, national scheme of regulation. The resulting confusion is exacerbated by the fact that the Nevada regulations only apply to some of the hazardous materials covered by the HMTA and HMR and not to others." **Southern Pac. Transp. Co., v. Public Serv. Comm'n of Nevada*, 909 F.2d 352, 358 (9th Cir. July 18, 1990), *reversing* No. CV-N-86-444-BRT (D. Nev. 1988).

• Waiver of preemption was granted as to a local transfer requirement, which restricted the emergency transfer of flammable or combustible liquids from a tank or platform truck to vehicles with Fire Department permits or to those otherwise authorized and when authorized by a Fire Department representative. WPD-1.

• Waiver of preemption was granted for a local requirement that gasoline be discharged by gravity into underground tanks, because such a requirement affords an equal or greater level of protection to the public as the HMR and does not unreasonably burden commerce. However, waiver of

preemption was denied as to other flammable liquids and to the discharge of gasoline into tanks which are not underground. WPD-1.

Marking of Hazardous Materials—See "covered subjects" discussion on pp. 1-2.

Mode or Means of Transportation—See "Prohibitions of Hazardous Materials Transportation."

Monitoring of Shipments (Also see "Inspection Requirements.")

• Monitoring of hazardous materials shipments by state officials is consistent. *IR-17. However, a carrier cannot be required to stop and wait for state officials assigned to monitor shipments. *IR-15.

Motor Carrier Registration and Permitting Forms—See discussion of section 1819 on p. 2.

Non-Regulatory Actions—See "Statements of Intent to Regulate."

Notice Requirements (Also see "Accident/Incident Reporting Requirements", "Delays of Transportation", and "Information/Documentation Requirements.")

• Advance notice requirements of hazardous materials transportation generally are inconsistent. IR-6; *IR-8(A); *IR-16; #IR-28; *IR-30; #IR-32.

• "Through its rulemaking process and related studies, DOT has determined what prenotification (including information, documentation and certification) requirements are necessary for the safe transportation of radioactive materials. In the process of analyzing rulemaking comments and studies it has commissioned or examined, DOT has determined what prenotification requirements are not necessary. This field has been totally occupied by the HMR. State and local provisions either authorizing less prenotification or requiring greater prenotification than the HMR, therefore, constitute obstacles to the accomplishment and execution of the objectives of the HMTA and the HMR, are inconsistent, and are preempted." *IR-8(A), 52 FR 13000, 13005.

• Local requirements for advance notice of hazardous materials transportation have potential to delay and redirect traffic and thus are inconsistent. IR-6; #IR-32.

• Notice requirements re RAM shipment schedule changes identical to NRC regulations (incorporated by HMR) are consistent. *IR-8.

• Notice requirements re RAM shipment schedule or changes thereto different from NRC regulations (incorporated by HMR) are inconsistent. *IR-14; *IR-15; *IR-16; *IR-18; *IR-18(A); *IR-27; *IR-30; #IR-32; *Chem-

Nuclear Systems, Inc. v. City of Missoula, No. 80-18-M (D. Mont. 1984).

• "The State's prenotification requirements differ from, and are more burdensome than, the radioactive materials prenotification requirements in §§ 173.22 and 117.825 of the HMR and 10 CFR 71.97 and 73.97 (NRC regulations incorporated by reference in § 173.22 of the HMR). [Its rule] requires more information about more shipments and thereby creates confusion and undermines the likelihood of proper compliance with the HMR prenotification requirements. Therefore, [it] is inconsistent with the HMR to the extent that it exceeds NRC requirements by requiring greater prenotification concerning non-spent fuel HRCQ radioactive materials shipments." *IR-27, 54 FR 16326, 16331. *Affirmed in "Colorado Pub. Utilities Comm'n v. Harmon*, 951 F.2d 1571 (10th Cir. 1991), *reversing* No. 88-Z-1524 (D. Colo. 1989).

• "Congress expressly found that state 'notification' requirements that 'vary from Federal laws and regulations' create 'unreasonable hazards' and pose a 'serious threat to public health and safety.' 49 U.S.C. app. 1801. Colorado's prenotification requirement varies from Federal law, poses a threat to uniformity, and thereby threatens public safety and obstructs the purpose and objective of Congress and the Secretary." **Colorado Pub. Utilities Comm'n v. Harmon*, 951 F.2d 1571 (10th Cir. 1991), *reversing* No. 88-Z-1524 (D. Colo. 1989).

"Otherwise Authorized by Federal Law"

• A State requirement is not "otherwise authorized by Federal law"—and thus not preempted under section 1811(a) of the HMTA—merely because it is not preempted by another Federal statute. **Colorado Pub. Utilities Comm'n v. Harmon*, 951 F.2d 1571 (10th Cir. 1991), *reversing* No. 88-Z-1524 (D. Colo. 1989).

Operations Suspension/Requirements—See "Traffic Controls/Regulations."

Packaging Design and Construction Requirements (Also see "covered subjects" discussion on pp. 1-2.)

• Packaging and cargo containment design, construction, testing, accessories, equipment, certification and permit requirements, including those vesting discretionary authority in state or local officials, are inconsistent. IR-2, *IR-8; *IR-8(A); *IR-18; *IR-18(A); IR-22; *National Paint & Coatings Ass'n, Inc. v. City of New York*, No. CV-4525 (ERK) (E.D. N.Y. 1985).

• "State and local governments may not issue requirements that differ from or add to Federal ones with regard to

packaging design, construction and equipment for hazardous materials shipments subject to Federal regulations." IR-2, 44 FR 75566 at 75568.

• Hazardous gas container-testing requirements are inconsistent. *National Tank Truck Carriers, Inc. v. City of New York*, 677 F.2d 270 (2d Cir. 1982).

• RAM container testing and certification requirements are inconsistent. *IR-8; *IR-8(A); *IR-15.

• Requirement for frangible shank-type lock on tank trailers carrying LNG or LPG is inconsistent since DOT comprehensively regulates cargo tank containment. IR-2.

• Initially, plaintiffs failed to demonstrate "obstacle" test violations or to obtain summary judgment enjoining city cargo containment system regulations, including requirements that flammable liquid cargo tanks be constructed of steel, not aluminum, and contain compartments and baffles, that flammable liquids not be transported in semi-trailers nor gases or combustible liquids in full trailers, and that trucks be inspected annually and carry a permit evidencing that inspection and imposing capacity limits on tank truck shipments. *National Paint & Coatings Ass'n, Inc. v. City of New York*, No. CV 4525 (ERK) (E.D. N.Y. 1985). However, those requirements were preempted by the packaging "covered subject" provision of HMTUSA. *Ibid.*, Oct. 18, 1991; WPD-1.

Penalties (Also see "Enforcement and Violations Provisions.")

• Penalties (such as fines, imprisonment or civil penalties) for violating consistent state or local rules are consistent unless they are so extreme or arbitrarily applied to reroute or delay shipments; mere differences in amount do not undermine consistency. IR-3; *IR-27, #IR-28.

• Penalties (such as fines, imprisonment or civil penalties) for violating inconsistent state or local rules are themselves inconsistent. *IR-18; *IR-18(A); *IR-27; #IR-28; *IR-30; **Jersey Cent. Power & Light Co. v. Township of Lacey*, 772 F.2d 1103 (3d Cir. 1985), *cert. denied*, 475 U.S. 1013 (1986).

• The absence of a "knowingly" requirement for imposition of a civil penalty is inconsistent because it promotes strict or absolute liability.

Packing/Repacking of Hazardous Materials See "covered subjects" discussion on pp. 1-2.

Permit Requirements (Also see "covered subjects" discussion on pp. 1-2, "Approval Requirements", "Fee Requirements", and "Inspection Requirements")

• Permit *per se* is not inconsistent; its consistency depends upon its requirements. IR-2; IR-3; #IR-20; #IR-28; *New Hampshire Motor Transport Ass'n v. Flynn*, 751 F.2d 43 (1st Cir. 1984); *Colorado Pub. Utilities Comm'n v. Harmon*, No. 88-Z-1524 (D. Colo. 1989), *rev'd on other grounds*, 951 F.2d 1571 (10th Cir. 1991).

• State permitting system which prohibits or requires certain transportation activities depending upon whether a permit has been issued (regardless of whether the activity is in compliance with the HMTA), applies to selected hazardous materials, involves extensive information and documentation requirements and contains considerable discretion as to permit issuance, is inconsistent. "Cumulatively, these factors constitute unauthorized prior restraints on shipments of nonradioactive hazardous materials that are presumptively safe based on their compliance with Federal regulations." #IR-19, 52 FR 24404, 24407. Affirmed in #IR-19(A) and #*Southern Pac. Transp. Co. v. Public Serv. Comm'n of Nevada*, 909 F.2d 352 (9th Cir. 1990), *reversing* No. CV-N-86-444-BRT (D. Nev. 1988).

• Local permit for hazardous materials storage is inconsistent with respect to storage incidental to transportation because of its burdensome information and documentation requirements, its discretionary nature, and its delay-inducing tendencies. #IR-28.

• Certain over-the-phone permits for transportation of hazardous gases are consistent. *National Tank Truck Carriers, Inc. v. City of New York*, 677 F.2d 270 (2d Cir. 1982).

• Permit requirements for each shipment involving application 4 hours to 2 weeks prior to shipment, carrying of permit on vehicle and "an additional piece of paper that supplies the same information as is required to be on the DOT Shipping paper" involve high probability of transportation delay and thus are inconsistent. IR-2.

• Local RAM transportation permit was consistent—prior to DOT's issuance of HM-164 re routing of certain RAM. *IR-1.

• Requirements implementing, inextricably related to, or "fleshing out," inconsistent permitting requirements are themselves inconsistent. *IR-21; *IR-21(A).

• If permit system is consistent, requirements to carry permit and display decal are consistent. IR-3. But requirement to display permit decal was held inconsistent. *American Trucking Ass'n v. City of Boston*, C.A. 81-628-

MA, Fed. Carr. Cas. ¶82,938 (CCH) (D. Mass. 1981).

• Since HMTA and HMR have almost completely occupied the field of RAM transportation safety, state and local requirements are limited to: (1) Traffic control or restrictions applying to all traffic, (2) designation of preferred routes under 49 CFR 177.825, (3) adoption of Federal or consistent requirements, (4) enforcement of consistent requirements or those for which preemption has been waived, and (5) imposition of reasonable transit fees to finance those enforcement activities and emergency response preparedness. Thus, RAM transportation permits generally are inconsistent. *IR-8; *IR-8(A); *IR-10; *IR-11; *IR-12; *IR-13; *IR-15; IR-18; *IR-18(A); #IR-19; #IR-19(A); #IR-20; *IR-21; *IR-21(A); *IR-27. **Colorado Pub. Utilities Comm'n v. Harmon*, 951 F.2d 1571 (10th Cir. 1991), *reversing* No. 88-Z-1524 (D. Colo. 1989).

• HMTA likely preempts significant portions (if not all) of an Indian tribe ordinance requiring license for transport of "radioactive substances," broadly defining those substances, requiring 180-day advance application and a \$1,000 fee, and providing broad discretion to Tribal Council whether to issue or deny the license. **Northern States Power Co. v. Prairie Island Mdewakanton Sioux Indian Community*, Civ. 3-91-783 (D. Minn. Dec. 23, 1991) (enjoining enforcement of ordinance), *appeal docketed* (8th Cir. 1992).

• Permit requirement calling for annual inspections to determine trucks' general safety levels is not preempted, but waiver of preemption was denied with regard to the enforcement of preempted local tank truck design and capacity requirements. WPD-1.

Persons Subject to Requirements (Also see "Transportation Subject to Requirements.")

• Definitions of persons subject to state or local requirements which include fewer persons than HMR minimize inconsistency possibilities and are themselves consistent. *IR-18.

Placarding and Other Hazard Warning Requirements (Also see "covered subjects" discussion on pp. 1-2.)

• Placarding and other hazard warning requirements are inconsistent if they are in addition to or different from Federal placarding requirements. IR-2; IR-3; IR-24; *IR-30; *Kappelmann v. Delta Air Lines, Inc.*, 539 F.2d 165 (D.C. Cir. 1976), *cert. denied*, 429 U.S. 1061 (1977); *National Tank Truck Carriers Inc. v. City of New York*, 677 F.2d 270 (2d Cir. 1982). Such requirements are consistent if they do not differ from the HMR. #IR-31; #IR-32.

• "Hazard warning systems are another area where [OHMT] perceives the Federal role to be exclusive. * * * Additional, different requirements imposed by States or localities detract from the DOT systems and may confuse those to whom the DOT systems are meant to impart information." IR-2, 44 FR 75565, 75568.

• Requirement for illuminated rear bumper sign conflicts with DOT lighting regulations, would divert attention from DOT placards and this is inconsistent. IR-2.

• Requirements for placards and identification of products are inconsistent. IR-3; *American Trucking Ass'n v. City of Boston*, *supra*.

• Requirement to display permit decal is inconsistent. *American Trucking Ass'n v. City of Boston*, *supra*.

• "It is OHMT's view that the HMR placarding provisions do completely occupy the field and, therefore, preempt all state and local placarding and warning sign requirements for hazardous materials transportation which are not identical to the Federal requirements. This is true with respect to requirements applying solely to pickups and deliveries, as well as to requirements applying to through-traffic, because all such non-identical requirements create confusion and undermine the uniform system of hazard communication necessary for the safe transportation of hazardous materials. Transportation viewed as being a mere pickup or delivery by one jurisdiction actually may be just the beginning or end of multi-state transportation through numerous local jurisdictions." IR-24, 53 FR 19848, 19850.

• But plaintiffs, prior to IR-24, failed to obtain summary judgment or make sufficient showing that Federal placarding regulations were intended to occupy field and preempt city hazard warning sign requirements with respect to local deliveries. *National Paint & Coatings Ass'n, Inc. v. City of New York*, No. 84-4525 (E.D. N.Y. 1985).

• Waiver of preemption was denied for local requirement mandating color and size of permanent "GASOLINE" lettering on trucks used to transport gasoline. Although not in conflict with the HMR, the requirement would mandate the maintenance of a separate fleet of trucks to transport gasoline and lead to an increase in the number of trips required. Further, the requirement would unreasonably burden commerce while not affording a greater level of public protection. WPD-1.

Prerotation Requirements—See "Notice Requirements."

Prohibitions of Hazardous Materials Transportation (Also see "Permit Requirements.")

• Prohibitions of hazardous materials transportation generally are inconsistent. IR-3; IR-3(A); IR-10; IR-16; #IR-20.

• Power to ban, rather than to channel or guide, hazardous materials traffic is exclusively Federal. "A unilateral local ban is a negation, rather than an exercise, of local responsibility, since it isolates the local jurisdiction from the risks associated with the commercial life of the nation." IR-3(A), 47 FR 18457, 18458 (Apr. 29, 1982).

• Town order requiring railroad to remove its railcars containing vinyl chloride from Town is inconsistent. *Consolidated Rail Corp. v. Hancock*, No. 79-0983-MA (D. Mass. 1979).

• City ban on hazardous materials pickups and deliveries by non-city-permitted vehicles is inconsistent. Likewise inconsistent is a City ban on fueling or stopping of hazardous materials through-traffic. IR-23.

• "A State or local government may not resolve the problem by effectively exporting it to another jurisdiction."

"Nine-Pack" Preamble, citing *Kassel v. Consolidated Freightways*, 450 U.S. 662 (1981) and IR-3.

• But local prohibition on liquefied gases transportation through city unless no practical alternative route existed is consistent. *National Tank Truck Carriers, Inc. v. City of New York*, 677 F.2d 270 (2d Cir. 1982), *aff'd City of New York v. Ritter Transportation, Inc.*, 515 F. Supp. 663 (S.D. N.Y. 1981).

• Prohibition of RAM or explosives transportation, including storage incidental thereto, is inconsistent. *IR-16; #IR-20; *IR-30.

• *De Facto* prohibitions are inconsistent. *IR-10.

• Prohibition of RAM transportation which RSPA has excepted from HMR requirements is inconsistent. #IR-20.

• Inadequacy of emergency response capabilities cannot provide basis for prohibiting transportation. *IR-18; *IR-18(A).

• To the extent it prohibits rail, air or water transportation of fireworks, State regulation allowing fireworks delivery by motor vehicle is inconsistent and thus is preempted. *South Dakota Dep't of Public Safety ex rel. Melgaard v. Haddenham*, 339 N.W.2d 786 (S.D. 1983).

• Similarly, City requirement that it determine the safest means of transportation constitutes an inconsistent ban on transportation by other modes of transportation. *IR-30. The HMTA does not require or authorize the mandatory selection of a single "safest" mode of transportation.

**City of New York v. U.S. Department of Transportation*, 715 F.2d 732 (2d Cir. 1983), *cert. denied*, 465 U.S. 1055 (1984); *IR-30.

• But an otherwise consistent requirement is not inconsistent because it applies only to certain modes of transportation. *IR-18.

• County ordinance prohibiting spent fuel or radioactive waste transportation into County for storage on nuclear power plant sites is inconsistent and thus preempted. *Jersey Cent. Power & Light Co. v. Township of Lacey*, 772 F.2d 1103 (3d Cir. 1985), *cert. denied*, 475 U.S. 1013 (1986).

Radio Requirements—See "Communications Requirements."

Railroad-Related Requirements

• State or local hazardous materials railroad transportation requirements may be preempted under the Federal Railroad Safety Act (FRSA), 49 U.S.C. app. 434, without consideration of whether they might be consistent under the HMTA. *CSX Transportation, Inc. v. City of Tallahoma*, No. 4-87-47 (E.D. Tenn. 1988); *CSX Transportation, Inc. v. Public Utilities Comm'n of Ohio*, 701 F. Supp. 608 (D. Ohio 1988), *affirmed*, 901 F.2d 497 (6th Cir. 1990), *cert. den.* 111 S. Ct. 781 (1991). Court decisions exclusively concerning FRSA preemption are irrelevant to HMTA preemption issues. #IR-31.

• State definition of "train" which results in regulation of transportation specifically exempted from regulation by the HMR is inconsistent. #IR-31.

Reporting Requirements—See "Accident/Incident Reporting Requirements."

Ripeness of IR Application (Also see "Standing To Apply for IR.")

• Pendency of a judicial proceeding concerning the same issues as are in an IR application does not bar the issuance of an IR but instead increases possible usefulness of an IR. *IR-27; *IR-30.

Routing Requirements (Also see highway routing discussion on p. 2 and "Delays of Transportation," "Prohibitions of Hazardous Materials Transportation" and "Traffic Controls/Regulations.")

• Without adequate safety justification and appropriate coordination with, and concern for safety of people in, adjoining affected jurisdictions, routing restrictions (including time and weather restrictions) are inconsistent—particularly if they result in increased transit times. *IR-1; IR-2; IR-3; IR-3(A); *IR-10; *IR-11; *IR-14; *IR-16, #IR-20; IR-23; #IR-32.

• Local routing restrictions prohibiting transport of liquefied gases through city except to areas for which no practical

interstate or major highway alternative route exists are consistent. *National Tank Truck Carriers, Inc. v. City of New York*, 677 F.2d 270 (2d Cir. 1982), *aff'd City of New York v. Ritter Transportation, Inc.*, 515 F. Supp. 663 (S.D. N.Y. 1981).

• State preferred route designations for highway route controlled quantity RAM are consistent if in accordance with 49 CFR 177.825(b).

• " * * * the Department, through promulgation of 49 CFR 177.825, has established a near total occupation of the 'field of routing' * * * requirements relating to the transportation of radioactive materials. Thus, state and local radioactive materials transportation routing * * * requirements other than (1) those identical to Federal requirements or (2) state designated alternate routes under 49 CFR 177.825(b), are likely to be inconsistent and thus preempted under section 112(a) of the HMTA." *IR-8(a), 52 FR 13000, 13003.

• Local routing restrictions re RAM are inconsistent if they prohibit transportation on routes authorized by 49 CFR part 177 or authorized by a state routing agency consistent with that part. *IR-18; *IR-18(A); #IR-20.

• Suspension or regulation of spent nuclear fuel shipments on non-Interstate highways (not needed for access to or from Interstate or preferred routes) is consistent. *IR-7.

• Routing restrictions on highway route controlled quantity RAM not in accordance with 49 CFR 177.825(b), which authorizes State (not local) designation of certain preferred routes, are inconsistent. *IR-8(A); *IR-16; *IR-18; *IR-18(A); IR-20; *IR-21; *IR-30; #IR-32; *Jersey Cent. Power Light Co. v. State of New Jersey*, No. 84-5883 (D. N.J., Dec. 27, 1984), *appeal dismissed as moot*, 772 F.2d 35 (3d Cir. 1985).

• Routing restrictions re non-highway route controlled quantity RAM required by 49 CFR part 172 to be placarded are inconsistent unless identical to 49 CFR 177.825(a). *IR-18; *IR-18(A); *IR-21; *IR-30; #IR-32.

• Local highway routing restrictions on other types of RAM are inconsistent. *IR-30; #IR-32.

• Non-highway routing restrictions on RAM are inconsistent. *IR-30.

• " * * * Congress' dual purposes in enacting the HMTA were: (1) To protect the Nation against the risks inherent in hazardous materials transportation; and (2) to prevent a patchwork of varying and conflicting State and local regulations. Commissioners' Ordinance No. 0-31-80 impedes both purposes. By delaying hazardous materials shipments

and causing traffic to be diverted from established routes, the Ordinance increases exposure to the risks inherent in hazardous materials transportation; and to the extent that the Ordinance results in the diversion of hazardous materials traffic into adjacent jurisdictions, it constitutes a routing requirement adopted without consideration of the safety impacts on other affected jurisdictions. To the extent that the Ordinance creates a precedent for the establishment of independent and uncoordinated local prenotification systems, it contributes to the creation of the regulatory patchwork which Congress intended to preclude." IR-6, 48 FR 760, 766.

- Routing requirements linked to inconsistent equipment requirements are inconsistent. IR-22; IR-23.

- *Sanctions*—See "Enforcement and Violations Provisions" and "Penalties."

- *Segregation and Separation Requirements*—See "Storage Provisions."

- *Shipping Paper Requirements* [Also see "covered subjects" discussion on pp. 1-2 and "Information/Documentation Requirements."]

- "Shipping papers" and "shipping documents" are interchangeable terms. *Colorado Pub. Utilities Comm'n v. Harmon*, 951 F.2d 1571 (10th Cir. 1991), reversing No. 88-Z-1524 (D. Colo. 1989).

- Virtually identical shipping paper requirements (to those of the HMR) generally are consistent. IR-31.

- Additional or different shipping paper requirements generally are inconsistent. IR-4, IR-4(A). State shipping document requirements not substantively the same as HMR are preempted. *Colorado Pub. Utilities Comm'n v. Harmon*, 951 F.2d 1571 (10th Cir. 1991), reversing No. 88-Z-1524 (D. Colo. 1989).

- Requirement for red or red-bordered shipping papers for intrastate hazardous materials shipments is an obstacle to uniform national system and thus is inconsistent. IR-4.

- Requirements for certification to state of shipment's compliance with law are redundant, constitute obstacles to HMTA, and thus are inconsistent. IR-8; IR-15; IR-21.

- Requirement to carry State Patrol phone number with shipping papers is not "substantively the same" and is preempted. *Colorado Pub. Utilities Comm'n v. Harmon*, 951 F.2d 1571 (10th Cir. 1991), reversing No. 88-Z-1524 (D. Colo. 1989).

Smoking Limitations

- Local smoking ban in vicinity of motor vehicle carrying flammable or combustible liquids or flammable gases,

which is more extensive than the HMR, is not preempted. WPD-1.

- *Speed Limit*—See "Traffic Controls/Regulations."

- *Standing To Apply for IR* [Also see "Ripeness of IR Application."]

- OHMS liberally construes its IR application threshold requirements and applies a broad interpretation of the "person affected" standard for requesting IR's, which are intended to resolve HMTA preemption issues expeditiously and inexpensively.

- IR-21; IR-32. Signing of contract to comply with local requirements does not preclude applying for inconsistency ruling. IR-28.

Statements of Purpose or of Intent To Regulate

- State or local statements of purpose or of intent to regulate are consistent. IR-9; IR-12; IR-15; IR-18; IR-30.

State Requirements

- Local requirements for compliance with otherwise consistent state requirements are consistent. IR-3.

Storage Provisions

- State or local prohibition of hazardous materials storage incidental to transportation without a state or local permit at places where, and for times when, the HMR allow such storage is inconsistent. IR-19; IR-19(A); IR-28; *Southern Pac. Transp. Co. v. Public Serv. Comm'n of Nevada*, 909 F.2d 352 (9th Cir. 1990), reversing No. CV-N-86-444-BRT (D. Nev. 1988).

- City prohibition of hazardous waste storage is inconsistent as applied to storage incidental to transportation. IR-32.

- City 20-car limitation on unloaded or loaded butane railcars at a site is inconsistent. *Consolidated Rail Corp. v. City of Bayonne*, 724 F. Supp. 320 (D. N.J. 1989).

- "In summary, the HMR contain a comprehensive series of regulations relating to the storage of hazardous materials incidental to transportation by rail. These regulations authorize or prohibit specific types of hazardous materials storage under specified circumstances. Creation by the PSC of a separate regulatory regime for rail transport-related storage of hazardous materials raises the spectre of widespread confusion. The PSC regulations are so open-ended and discretionary that they authorize the PSC to approve storage prohibited by the HMR or prohibit storage authorized by the HMR." IR-19, 52 FR 24404, 24410.

- "State or local imposition of containment or segregation

requirements for the storage of hazardous materials incidental to the transportation thereof different from, or additional to those in, § 177.848(f) of the HMR create confusion concerning such requirements and the likelihood of noncompliance with § 177.848(f)." IR-28, 55 FR 8864, 8893.

- "Despite DOT's extensive regulation of loading, unloading, transfer and storage incidental to the transportation of hazardous materials, the Nevada regulations require a carrier to obtain an annual permit prior to engaging in these activities within the state of Nevada. The Nevada regulations, thus, create a separate regulatory regime for these activities, fostering confusion and frustrating Congress' goal of developing a uniform, national scheme of regulation. The resulting confusion is exacerbated by the fact that the Nevada regulations only apply to some of the hazardous materials covered by the HMTA and HMR and not to others." *Southern Pac. Transp. Co. v. Public Serv. Comm'n of Nevada*, 909 F.2d 353 (9th Cir. 1990), reversing No. CV-N-86-444-BRT (D. Nev. 1988).

- *Time Restrictions* [Also see "Routing Requirements" and "Delays of Transportation."]

- Time restrictions are a subset of routing restrictions. IR-3. Thus, without adequate safety justification and appropriate coordination with adjoining affected jurisdictions, time restrictions, except as to in-city pickup and deliveries, are inconsistent. IR-3(A); IR-23; IR-32.

- Statewide prohibition on hazardous materials carriage between 7-9 a.m. and 4-6 p.m. on weekdays resulted in delay and are inconsistent. IR-2; *National Tank Truck Carriers, Inc. v. Burke*, 535 F. Supp. 509 (D. R.I. 1982) *aff'd*, 698 F.2d 559 (1st Cir. 1983). Also inconsistent is statewide prohibition on RAM transportation other than during non-holiday weekdays from 9 a.m. to 4 p.m. IR-21.

- Citywide rush-hour curfew (no transport between 6-10 a.m. and 3-7 p.m.) on liquefied gas transportation is consistent. *National Tank Truck Carriers, Inc. v. City of New York*, 677 F.2d 270 (2d Cir. 1982), *aff'g City of New York v. Ritter Transportation Co.*, 515 F. Supp. 663 (S.D. N.Y. 1981).

- City prohibition of hazardous materials transportation in downtown area between 6 a.m. and 8 p.m. on weekdays is consistent insofar as it applies to in-city pickups and deliveries. IR-3.

- No decision on consistency of 6-10 a.m. and 3-7 p.m. bridge and tunnel

prohibition is possible without information on safety justification, coordination with other jurisdictions, and delays or diversions of hazardous materials. #IR-20.

- Restriction of RAM transportation to May-October period and prohibition of holiday or inclement weather shipments is inconsistent. *IR-14.

- County's assertion of unfettered authority to change dates, routes and times of hazardous materials shipments is inconsistent. *IR-18.

- Time restrictions linked to inconsistent routing requirements are inconsistent. IR-22; IR-23.

- City restriction of hazardous materials through-traffic on weekdays to 10 a.m.-3 p.m. and 7 p.m.-6 a.m. for explosives and "prohibited materials" and to 9 a.m.-4 p.m. and 6 p.m.-7 a.m. for other "hazardous cargo" is inconsistent because not based on adequate safety analysis or preceded by consultations with all affected jurisdictions. IR-23. City prohibition of hazardous waste transportation between 6:30 a.m. and 8:30 a.m. and 2 and 3 p.m. is inconsistent for same reason. #IR-32.

Traffic Controls/Regulations (Also see "Routing Requirements.")

- So long as reasonably administered on a case-by-case basis, the local authority to restrict or suspend operations when road, weather, traffic or other hazardous conditions or circumstances warrant is consistent. IR-3; *IR-15(a); #IR-20; *American Trucking Ass'n v. City of Boston, supra*; *National Tank Truck Carriers, Inc. v. Burke*, 535 F. Supp. 509 (D.R.I. 1982), *aff'd*, 698 F.2d 559 (1st Cir. 1983).

- Local traffic controls are presumed to be valid. #IR-20; IR-23; #IR-32. This includes speed limits. #IR-32.

- "To the extent that nationwide regulations do not adequately address a particular local safety hazard, state and local governments can regulate narrowly for the purpose of eliminating or reducing the hazard." IR-2, 44 FR 75565, 75568.

- Radioactive materials may not be singled out for different types of control than hazardous materials generally, nor may controls conflict with carrier discretion and responsibility provided by the HMR. *IR-15(A).

- Requirement to comply with lawful orders, instructions and directives of authorized bridge personnel is consistent. #IR-20.

- Local "rules of road" restrictions on vehicles carrying hazardous materials

are consistent. Thus, requirements for separation distances between moving or parked vehicles carrying hazardous materials which do not create hazards or unreasonable delays are consistent. IR-3; #IR-20; #IR-32.

- Local provision that carriers must use major city thoroughfares and that otherwise Federal motor carrier safety routing rules (49 CFR 397.9(a)) apply is consistent. IR-3. Likewise consistent is a local regulation requiring hazardous materials through-traffic to avoid congested areas so far as practicable and to use highway exits as close as possible to final destination. IR-23.

- Weight restriction applying only to hazardous materials and their containers, not to entire vehicles and contents, is not a *bona fide* traffic control measure and is inconsistent. #IR-20.

- State order prohibiting railroad cars carrying hazardous materials from being cut off in motion, struck by other cars moving under their own momentum or coupled into with unnecessary force is inconsistent and preempted by the HMTA, HMR, and the Federal Railroad Safety Act. *Atchison, Topeka and Santa Fe R.R. Co. v. Illinois Commerce Comm'n*, 453 F. Supp. 920 (N.D. Ill. 1977).

- Traffic controls linked to inconsistent equipment requirements are inconsistent. IR-22; IR-23.

Training Requirements

- "[S]tate may impose more stringent training requirements [than HMR] on motor carrier operators so long as those requirements do not directly conflict with the HMR requirements and apply only to individuals domiciled in that state and on or after April 1, 1992 to individuals domiciled in other states who do not have hazardous materials endorsements on their CDL's [commercial drivers' licenses]." #IR-26, 54 FR 16314, 16322. This principle applies to RAM and other hazardous materials. *Ibid*.

- " * * * the Department, through promulgation of 49 CFR 177.825, has established a near total occupation of the field of training requirements relating to the transportation of radioactive materials. Thus, state and local radioactive materials transportation * * * training requirements other than * * * those identical to Federal requirements * * * are very likely to be inconsistent and thus preempted under section 112(a) of the HMTA." *IR-8(A), 52 FR 13000, 13003; quoted and relied upon in *IR-27

and **Colorado Pub. Utilities Comm'n v. Harmon*, 951 F.2d 1571 (10th Cir. 1991), *reversing* No. 88-Z-1524 (D. Colo. 1989). However, see preceding paragraph.

- State requirement for submission of company's driver training program, including provisions for RAM and mountain driving training, as prerequisite to certain RAM transportation is inconsistent. *IR-27; **Colorado Pub. Utilities Comm'n v. Harmon*, 951 F.2d 1571 (10th Cir. 1991), *reversing* No. 88-Z-1524 (D. Colo. 1989).

Transportation Subject to Requirements (Also see "Persons Subject to Requirements.")

- Where a specific decision has been made in the HMR that certain transportation in commerce of hazardous materials should not be subject to the general requirements of the HMR, state or local regulation of that transportation is inconsistent with the HMR under the 'obstacle' test * * * #IR-31, 55 FR 25572, 25581.

Tunnel Restrictions

- Except for RAM, State and local regulations regarding the kind, character or quantity of hazardous material permitted to be carried through any urban vehicular tunnel used for mass transportation are consistent. 49 CFR 177.810. But prohibition on RAM transportation through a tunnel is inconsistent. #IR-20.

Unloading—See "covered subjects" discussion on pp. 1-2 and "Loading and Unloading."

Waiver of Preemption

- Under HMTA prior to amendment by HMTUSA, if non-Federal requirement afforded an equal or greater level of protection to the public than the HMTA or HMR, and the requirement did not unreasonably burden commerce, such requirement was not preempted. Therefore, RSPA was obliged to issue a "non-preemption determination" if those two tests were met. **New York City v. U.S. Department of Transportation*, 87 Civ. 1443 (MGC) (S.D.N.Y. 1988).

- After amendment by HMTUSA, DOT has discretion to grant a waiver of preemption where the non-Federal requirement affords an equal or greater level of protection to the public than HMTA or HMR, and the requirement does not unreasonably burden commerce. 49 app. U.S.C. 1811(b); WPD-1.

Weight Restrictions—See "Traffic Controls/Regulations."

INCONSISTENCY RULINGS

Ruling	Applicant	Subject	Disposition	Summary
IR-1	Associated Universities, Inc.....	New York City health code restrictions on radioactive materials (RAM).	Public Notice: 8/15/77 (42 FR 41204); Ruling: IR-1, 4/20/78 (43 FR 16954).	City ordinance effectively banning shipment of radioactive materials in or through city was <i>consistent</i> with HMTA or HMR—[prior to issuance of Fed. highway routing rule HM-164].
IR-2	R.I. Div. of Public Utilities & Carriers.	R.I. restrictions on transportation of bulk flammable gas by highway.	Public Notice: 3/12/79 (44 FR 13617); Ruling: IR-2, 12/20/79 (44 FR 75566); Appeal Filed: 1/21/78; Perfected 6/24/78; Ruling on Appeal: 10/30/80 (45 FR 71881); Upheld: 535 F. Supp. 509 (D. R.I. 1982) and 698 F.2d 559 (1st Cir. 1983).	State regulations re two-way radio communications, immediate notification to State Police of any accident, use of headlights at all times, vehicle inspections and definitions were <i>consistent</i> . But requirements re written notification to state agencies of accidents, illuminated rear bumper signs, frangible shank-type locks on trailers, permit requirements for each shipment and prohibitions on travel in rush hours were <i>inconsistent</i> . Affirmed on appeal and in court.
IR-3	Hazardous Materials Advisory Council (HMAC), Mass. Motor Transport Assn., American Trucking Associations, Inc. (ATA).	City of Boston regulations on routing, time of day, and other requirements re hazardous materials transportation.	Public Notice: 3/24/80 (45 FR 19110); Ruling: IR-3, 3/26/81 (46 FR 18918); Appeal filed: 7/10/81; Ruling on Appeal: 4/29/82 (47 FR 18457).	City regulations re immediate reporting of accidents to local officials, requiring use of major roads except for pickups and deliveries, assessing penalties for violations of valid local regulations, requiring use of headlights, specifying separation distances between vehicles and vehicle operating requirements, and adopting Federal and State motor carrier safety regulations were <i>consistent</i> . But, City regulations re marking vehicles to identify products, requiring written accident reports, restricting travel during a.m. rush hours, and restricting use of certain streets were <i>inconsistent</i> . No decision rendered on undefined permit system. On appeal, written accident reports still found <i>inconsistent</i> , but routing restrictions inconsistency finding was rescinded with no conclusion as to their validity.
IR-4	National Tank Truck Carriers, Inc. (NTTC)	Washington State shipping papers requirements.	Public Notice: 11/3/80 (45 FR 72855); Ruling: IR-4, 1/11/82 (47 FR 1231); Appeal filed: 1/28/82; Ruling on Appeal: 8/2/82 (47 FR 33357); Corrected 8/5/82 (47 FR 34074).	State law requiring intrastate shipments of hazardous materials carried by motor vehicles to be accompanied by red or red bordered shipping papers was <i>inconsistent</i> .
IR-5	Ritter Transportation Nat'l LP-Gas Assn. Propane Corp. of America & 7 other companies.	New York City Fire Dept. regulations re hazardous gases.	Public Notice: 4/6/81 (46 FR 20662); Ruling: IR-5, 11/18/82 (47 FR 51991).	City regulations re gas under pressure, combustible or flammable gas, combustible mixture and inflammable mixture had definitions different from DOT's and thus were <i>inconsistent</i> .
IR-6	General Battery Corp.....	City of Covington, KY prenotification ordinance.	Public Notice: 8/26/82 (47 FR 37737); Ruling: IR-6, 1/6/83 (48 FR 760).	City ordinance extending scope of hazardous materials regulated and requiring advance notice of rail, barge and truck transport of dangerous and hazardous materials within city was found <i>inconsistent</i> .
IR-7	Nuclear Assurance Corp.....	Governor of New York Order suspending shipments of spent fuel.	Public Notice: 5/12/83 (48 FR 21496); Correction: 5/26/83 (48 FR 23747); Ruling: IR-7, 11/27/84 (49 FR 46632).	Governor's letter advising company to suspend spent nuclear fuel shipments of 2 non-interstate highway routes was <i>consistent</i> because it required compliance with Federal regulations requiring use of Interstate Highway System.
IR-8	Nuclear Assurance Corp.....	Michigan regulations re radioactive materials (RAM) transportation.	Public Notice: 5/12/83 (48 FR 21496); Correction: 5/26/83 (48 FR 23747); Ruling: IR-8, 11/27/84 (49 FR 46637); Appeal Filed: 12/20/84; Ruling on appeal: 4/20/87 (52 FR 13000); Correction: 6/11/87 (52 FR 22416).	State RAM regulations re confidentiality standards, inspection requirements (relating to valid regulations), incorporation of Federal regulations, and notification of shipment schedule changes (identical to Federal) were <i>consistent</i> . But state regulations re RAM definition, application for approval of shipments, application approval criteria (including container testing and certification requirements) different from Federal regulations, written notification of approvals, communications requirements, and notifications of delays and emergency plan implementation were <i>inconsistent</i> .
IR-9	Nuclear Assurance Corp.....	Governor of Vermont's letters suspending shipments of spent nuclear fuel.	Public Notice: 5/12/83 (48 FR 21496); Correction: 5/26/83 (49 FR 23747); Ruling: IR-9, 11/27/84 (49 FR 46644).	Governor's letter advising that spent nuclear fuel shipments would not be permitted until Federal agencies established a national policy on them was found not to be state "requirement" and thus was not subject to an inconsistency determination.

INCONSISTENCY RULINGS—Continued

Ruling	Applicant	Subject	Disposition	Summary
IR-10	Nuclear Assurance Corp.....	New York State Thruway Authority regulations re RAM transportation.	Public Notice: 5/12/83 (48 FR 21496); Correction: 5/26/83 (48 FR 23747); Ruling: IR-10, 11/27/84 (49 FR 46645); Correction: 3/12/85 (50 FR 9939).	Thruway Authority regulation prohibiting RAM transportation except under its procedures, which generally resulted in approval of low-level RAM shipments and disapproval of shipments of highway route controlled quantities of RAM, was <i>inconsistent</i> .
IR-11	DOT (Under 49 CFR 107.209(b)).	Ogdensburg Bridge and Port Authority regulations re RAM transportation.	Public Notice: 5/12/83 (48 FR 21496); Correction: 5/26/83 (48 FR 23747); Ruling: IR-11, 11/27/84 (49 FR 46647).	Bridge and Port Authority regulations specifying international bridge crossing times; requiring escort, compensation therefor, and evidence of unquantified "proper" insurance, and incorporating county requirements were <i>inconsistent</i> as applied to non-highway route controlled RAM quantities. Bridge was not part of Interstate Highway system.
IR-12	DOT (Under 49 CFR 107.209(b)).	St. Lawrence County (N.Y.) law re RAM transportation.	Public Notice: 5/12/83 (48 FR 21496); Correction: 5/26/83 (49 FR 23747); Ruling IR-12, 11/27/84 (49 FR 46650).	County law regulating RAM transport on non-Interstate highways, as it applied to non-highway route controlled quantities of RAM, was <i>consistent</i> in its non-regulatory and non-obligatory policy statement, but was <i>inconsistent</i> in its permit requirements and hazard class definitions (different from Federal).
IR-13	DOT (under 49 CFR 107.209(b)).	Thousand Islands Bridge Authority regulations re hazardous materials (including RAM) transportation.	Public Notice: 5/12/83 (48 FR 21496); Correction: 5/26/83 (49 FR 23747); Ruling IR-13, 11/27/84 (49 FR 46653).	Bridge authority regulations re permit, fee and escort requirements as applied to vehicle carrying highway route controlled quantities of radioactive materials over Interstate Highway System bridge were <i>inconsistent</i> .
IR-14	DOT (under 49 CFR 107.209(b)).	Jefferson County (N.Y.) ordinance re RAM highway transportation.	Public Notice: 5/12/83 (48 FR 21496); Correction: 5/26/83 (49 FR 23747); Ruling IR-14, 11/27/84 (49 FR 46656).	County ordinance regulating transportation of highway route controlled quantities of RAM in area including Interstate highway was <i>consistent</i> insofar as it contained front and rear escort requirements identical to NRC standards but was <i>inconsistent</i> in requiring 24-hour prenotification, limiting transport to May-October period, and prohibiting holiday and inclement weather shipments.
IR-15	DOT (under 49 CFR 107.209(b)).	Vermont regulations re RAM transportation.	Public Notice: 8/4/83 (48 FR 35550); Ruling: IR-15, 11/27/84 (49 FR 46660); Appeal Filed: 12/19/84; Ruling on Appeal: 4/20/87 (52 FR 13062); Correction: 5/15/87 (52 FR 18492).	State regulations re highway, rail and water transport of irradiated reactor fuel and nuclear waste were <i>consistent</i> as to statement of intent, information requirements identical to NRC's, confidentiality standards same as Federal, and inspection requirements (as applied to consistent rules); but were <i>inconsistent</i> re application to Federally-regulated highway route controlled quantity radioactive materials, submission of application for shipment approval (including identification, fee and container certification requirements), criteria for approvals, written notice of approval by Vermont, notice requirements for schedule changes and delays, and monitoring of shipments by state officials.
IR-16	Arizona DOT	City of Tucson ordinance re RAM transportation.	Public Notice: 12/12/83 (48 FR 55387); Ruling: IR-16, 5/20/85 (49 FR 20872).	City ordinance establishing different (from Federal) RAM definitions, prohibiting certain transportation within or through city, and requiring prenotification was <i>inconsistent</i> .
IR-17	Wisconsin Electric Power Co ...	Illinois statutory fee on spent nuclear fuel transportation.	Public Notice: 10/30/85 (50 FR 45186); Ruling: IR-17, 6/9/86 (51 FR 20926); Appeal Filed: 9/3/86; Public Notice: 9/29/86 (51 FR 34527); Correction: 10/8/86 (51 FR 36125); Ruling on Appeal: 9/25/87 (52 FR 36200); Correction: 11/6/87 (52 FR 37399).	State law imposing fee of \$1,000 per cask of spent nuclear fuel transported through state used to fund consistent inspection and emergency response programs was <i>consistent</i> .
IR-18	Prince George's County (MD) ...	Prince George's County (Md.) regulations re RAM transportation.	Public Notice: 10/4/84 (49 FR 39260); Ruling IR-18, 1/2/87 (52 FR 200); Appeal Filed: 1/20/87; Ruling on Appeal: 7/29/88 (53 FR 22850).	County Regulations re RAM transportation were <i>inconsistent</i> re statement of intent, findings, essentially identical hazardous materials definitions, penalties, and permit, advance notice, information, time, routing, escort, and bonding requirements.
IR-19	Southern Pacific Transportation Company.	Nevada regulations re railroad-related loading, unloading transfer and storage of RAM, explosives and other hazardous materials.	Public Notice: 11/25/86 (51 FR 42808); Ruling: IR-19, 6/30/87 (52 FR 24404); Correction: 8/7/87 (52 FR 29468); Appeal Filed: 7/26/87; Ruling on Appeal: 4/7/88 (53 FR 11600).	State regulations containing burdensome and discretionary permitting system for railroad-related loading, unloading, transfer and storage of hazardous materials were <i>inconsistent</i> .

INCONSISTENCY RULINGS—Continued

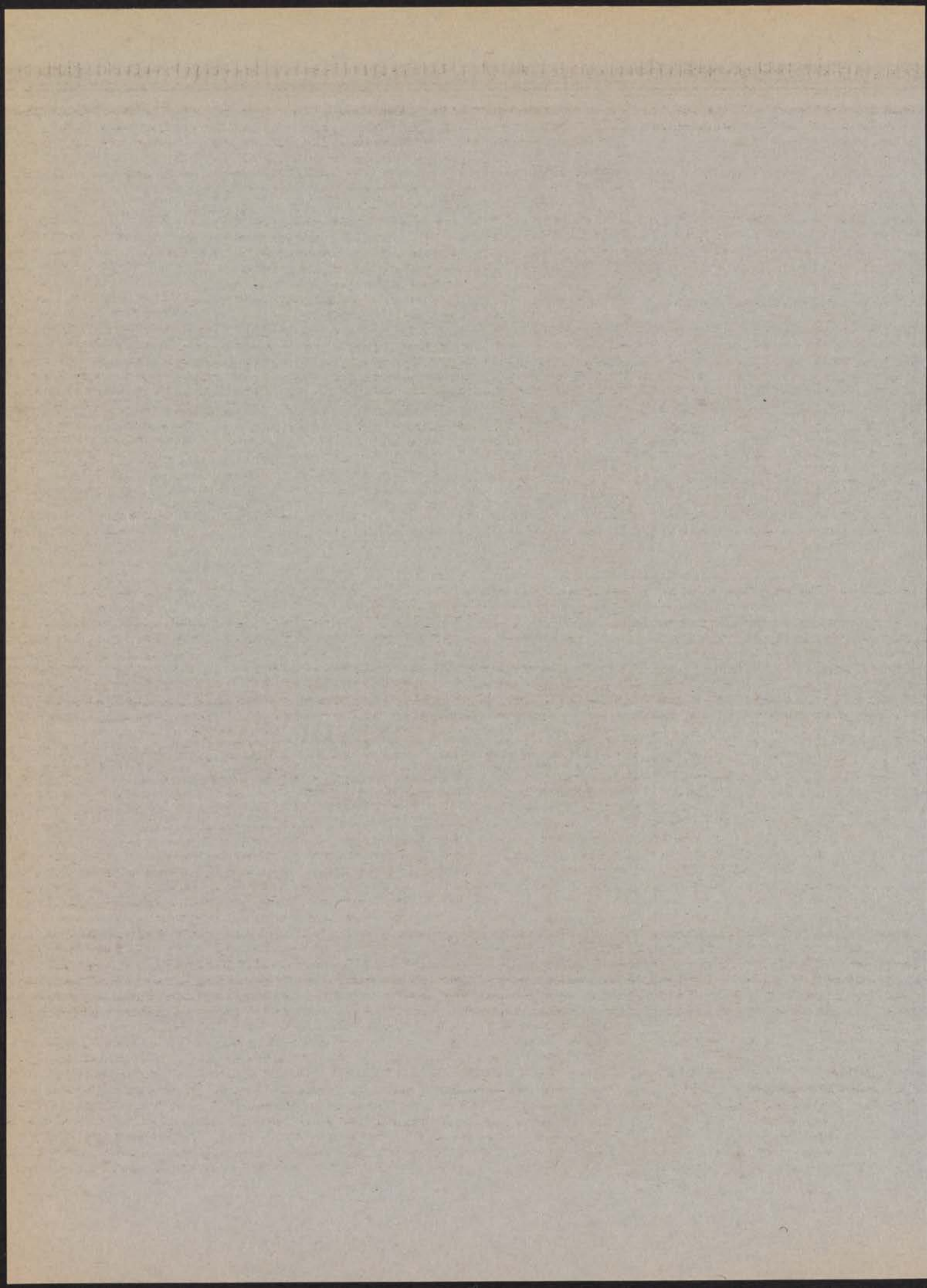
Ruling	Applicant	Subject	Disposition	Summary
IR-20	Citizens Against Nuclear Trucking (CANT).	Triborough Bridge and Tunnel Authority regulations re RAM and explosives transportation.	Application Amended: 10/8/86; Public Notice: 10/20/86 (51 FR 37248); Correction: 11/5/86 (51 FR 40294); Ruling: IR-20, 6/30/87 (52 FR 24396); Correction: 8/7/87 (52 FR 29468).	Authority regulations effectively prohibiting transportation of most RAM and explosives through tunnels and across bridges were <i>inconsistent</i> . Unfettered discretion to ban transportation was <i>inconsistent</i> . But traffic controls, inspections, vehicle separation distances, and requirements to comply with lawful orders were <i>consistent</i> .
IR-21	Citizens Against Nuclear Trucking (CANT).	Connecticut statute and regulations re RAM Transportation.	Public Notice: 9/29/86 (51 FR 34524); Correction: 10/8/86 (51 FR 36125); Ruling: IR-21, 10/2/87 (52 FR 37072); Appeal Filed 11/2/87; Public Notice: 1/15/88 (53 FR 1089); Ruling on Appeal: 11/11/88 (53 FR 46735).	State statute and regulations re RAM transportation permitting, information documentation, certification, time restriction, routing, escort requirements and related definition were <i>inconsistent</i> . OHMT applies a broad interpretation of the "person affected" standing requirement for inconsistency ruling applications.
IR-22	American Trucking Assns., Inc. (ATA) & National Tank Truck Carriers, Inc. (NTTC).	New York City Fire Dept. Directives re tank truck carriage of hazardous liquids and gases.	Public Notice: 5/18/87 (52 FR 18668); Ruling: IR-22, 12/8/87 (52 FR 46574); Correction: 12/29/87 (52 FR 49107); Appeal Filed 2/1/88; Public Notice: 2/24/88 (53 FR 5538); Ruling on Appeal: 6/23/89 (54 FR 26698).	City regulations re cargo containment systems, equipment and related areas were <i>inconsistent</i> because they involved exclusively Federal areas and caused delays.
IR-23	American Trucking Assns., Inc. (ATA) & National Tank Truck Carriers, Inc. (NTTC).	New York City routing and time restrictions.	Public Notice: 5/18/87 (52 FR 18668); Ruling: IR-23, 5/11/88 (53 FR 16840); Appeal Filed 6/20/88; Public Notice: 8/23/88 (53 FR 32184); Appeal dismissed as moot: 9/9/92 (57 FR 41165).	City routing and time restrictions on through-traffic hazardous materials transportation were <i>inconsistent</i> because of absence of determination of effect on overall public safety and consultations with other affected jurisdictions.
IR-24	McGil Specialized Carriers, Inc.	City of San Antonio, TX regulations re placarding of small quantities of explosives.	Public Notice: 11/6/87 (52 FR 43018); Ruling: IR-24, 5/31/88 (53 FR 19848).	City regulation adopting vague explosives placarding requirement of 1979 Uniform Fire Code was <i>inconsistent</i> because placarding is exclusively Federal area and City regulation required placarding where HMR forbid it.
IR-25	City of Maryland Heights, MO...	City of Maryland Heights Ordinance requiring \$1,000 bond for each waste-hauling vehicle.	Public Notice: 6/6/88 (53 FR 20736); Ruling: IR-25, 4/21/89 (54 FR 16308); Correction: 5/10/89 (54 FR 20235).	City ordinance requiring a \$1,000 bond for highway transportation of hazardous wastes was <i>inconsistent</i> insofar as it applied to hazardous materials regulated under the HMTA.
IR-26	California Dept. of Motor Vehicles.	California administrative Code regulations re training for highway transportation of hazardous materials.	Public Notice: 11/6/87 (52 FR 43830); Extension: 12/29/87 (52 FR 49107); Ruling: IR-26, 4/21/89 (54 FR 16314); Correction: 5/18/89 (54 FR 21526).	State regulations requiring training for operators of motor vehicles carrying hazardous materials generally were <i>consistent</i> with respect to domiciliaries of that state but <i>inconsistent</i> with respect to non-domiciliaries. However, after April 1, 1992, they would be <i>consistent</i> with respect to non-domiciliaries not having a hazardous material endorsement on their commercial drivers' licenses (CDL's).
IR-27	Department of Energy (DOE)....	Colorado law and regulations re RAM transport.	Public Notice: 8/11/88 (54 FR 30418); Ruling: IR-27, 4/21/89 (54 FR 16326); Correction: 5/9/89 (54 FR 20001).	State regulations concerning permits, training, prenotification, information, documentation, and permit fee requirements for transportation of RAM, as well as civil penalty provisions relating to them, were <i>inconsistent</i> . But inspection, civil penalty and shipping fee requirements not related to inconsistent State activities were <i>consistent</i> .
IR-28	Yellow Freight System, Inc.....	City of San Jose, CA ordinance re hazardous materials storage.	Public Notice: 10/5/88 (53 FR 39196); Ruling: IR-28, 3/8/90 (54 FR 8884); Appeal Filed: 4/5/90; Public Notice: 6/5/90 (55 FR 22986); Appeal dismissed as moot: 9/9/92 (57 FR 41165).	City ordinance re hazardous materials storage was <i>inconsistent</i> as applied to transportation (including storage, loading and unloading incidental thereto) with respect to hazardous materials definition; permitting, information and documentation, storage, loading, unloading and certain incident reporting requirements; and related civil penalty provisions. But most incident reporting requirements and related civil penalty provisions were <i>inconsistent</i> .
IR-29	Reichhold Limited.....	Maine statutes and regulations re hazardous materials transportation permit and fee.	Public Notice: 9/12/89 (54 FR 37764); Ruling: IR-29, 3/12/90 (55 FR 9304).	State statutes and regulation re hazardous materials transportation materials transportation permit and fee were <i>inconsistent</i> insofar as they were "triggered" but SARA Title III list of hazardous substances instead of HMR's Hazardous Materials Table.

INCONSISTENCY RULINGS—Continued

Ruling	Applicant	Subject	Disposition	Summary
IR-30	Department of the Navy.....	City of Oakland, CA Nuclear Free Zone Act re RAM transport.	Public Notice: 6/27/89 (54 FR 27104); Extension: 9/25/89 (54 FR 39253); Ruling: IR-30, 3/14/90 (55 FR 9676).	City ordinance re RAM Transport was <i>inconsistent in all respects</i> : Definitions, 45-day prenotification, routing and mode requirements, placarding, prohibition of transportation and related activities, information requirements, and inspection enforcement and fee provisions
IR-31	State of Louisiana.....	Louisiana statutes and regulations adopting 49 CFR parts 171-180 with respect to rail carriers and shippers.	Public Notice: 9/27/89 (54 FR 39622); Ruling: IR-31, 6/21/90 (55 FR 25571); Appeal Filed: 7/2/90; Public Notice: 9/6/90 (55 FR 36735); Appeal dismissed as moot: 9/9/92 (57 FR 41165).	State statutes and regulations adopting HMR generally <i>consistent</i> . However, the following were <i>inconsistent</i> : Different hazardous materials definitions, different definition of "train" insurance requirements, written incident reports, civil penalties for other than "knowing" violations, and penalty and enforcement provisions insofar as related to inconsistent substantive provisions
IR-32	Chemical Waste Transportation Council.	City of Montevallo, AL ordinance re hazardous waste transportation.	Public Notice: 1/23/89 (54 FR 3177); Ruling: IR-32, 9/6/90 (55 FR 36736). Appeal Filed: 9/27/90. Public Notice: 10/17/91 (56 FR 52154); Appeal dismissed as moot: 9/9/92 (57 FR 41165).	City code re hazardous waste transportation was <i>consistent</i> re speed limit, separation distance, "headlights-on," hazardous waste manifest-carriage and placarding requirements; CB radio requirement except relating to radioactive materials; and immediate accident reporting requirement except relating to irradiated reactor fuel. Code was <i>inconsistent</i> re hazardous waste definitions; routing, time, weather, prenotification, and liability insurance requirements; CB radio requirement relating to radioactive materials; immediate accident reporting requirement relating to irradiated reactor fuel; and prohibition on transportation-related hazardous waste storage

NON-PREEMPTION DETERMINATIONS

Ruling	Applicant	Subject	Disposition	Summary
N/A	Commonwealth of Mass. on behalf of Town of Framingham.	Massachusetts statute and Town of Framingham by-law restricting storage of vinyl chloride.	Public Notice: 10/5/81; Public Hearing: 12/15/81; Suspended: 4/15/83.	Application for nonpreemption determination cannot be acted upon until inconsistency determination has been made as to provisions at issue.
NPD-1	City of New York.....	City of New York Health Code provision establishing permit requirements for each shipment into or through City of specified radioactive materials, thereby effectively banning transportation of most radioactive materials.	Public Notice: 1/15/85 (50 FR 2528); Ruling: NPD-1, 9/12/85 (50 FR 37308); Appeal Filed: 10/8/85; Ruling on Appeal: 12/30/86 (51 FR 47182); Reversed and remanded, <i>City of New York v. U.S. Dept. of Transportation</i> , 87 Civ. 1443 (MGC) (S.D.N.Y. 12/8/88); Public Notices: 3/28/89 (54 FR 12732), Correction: 4/4/89 (54 FR 13606), 7/16/90 (55 FR 28982), 9/15/90 (55 FR 36380); Superseded by WPD-2: 7/2/92 (57 FR 29556).	Denying City's application, OHMT and RSPA stated that requests for nonpreemption determinations would be considered only if applicant could demonstrate that its inconsistent requirement is necessary, in light of exceptional local circumstances, to assure the adequate level of safety intended by the HMTA. However, Federal district court held that HMTA does not authorize requirement of a threshold showing of exceptional circumstances, reversed the denial of City's application, and remanded to DOT to determine whether application meets the two statutory criteria. RSPA has published notices reopening the docket and inviting public comment to update and supplement the docket.
WPD-1	City of New York.....	City of New York Fire Dept. Regulations re capacity, construction, etc. of tank trucks transporting flammable and combustible liquids and compressed gases.	Public Notices: 11/15/91 (56 FR 58126) Feb. 27, 1992 (57 FR 6767) 4/8/92 (57 FR 11984); Denial of Temporary Stay of Preemption: 3/23/92 (57 FR 10057); Ruling: WPD-1, 6/2/92 (57 FR 23278).	RSPA has no authority under the HMTA to grant a temporary stay of preemption. Denial of waiver on tank truck design and construction requirements; dismissal of application on compressed gases regulations; grant of waiver on emergency transfer; no preemption on inspection and permit as general safety measures.



Federal Register

Thursday
October 1, 1992

Part III

Department of Transportation

**Research and Special Programs
Administration**

49 CFR Part 171

**Infectious Substances; Correction and
Extension of Compliance Date; Final Rule**

DEPARTMENT OF TRANSPORTATION**Research and Special Programs Administration****49 CFR Part 171**

[Docket No. HM-181; Amendment No. 171-112]

RIN 2137-AA01

Infectious Substances; Correction and Extension of Compliance Date**AGENCY:** Research and Special Programs Administration (RSPA), DOT.**ACTION:** Final rule; correction and extension of compliance date.

SUMMARY: RSPA is revising the transition period applicable to infectious substances, including regulated medical wastes, under a final rule published in the *Federal Register* on December 20, 1991 (56 FR 66124). The compliance date for classification and hazard communication requirements applicable to infectious substances is delayed from October 1, 1992, to April 1, 1993. The compliance date for packaging requirements for infectious substances, which was inadvertently omitted from the December 20, 1991 final rule, is extended in this document to April 1, 1993. The delay in the compliance date is necessary to provide additional time for RSPA to conclude its evaluation and respond to two petitions for reconsideration and a number of related comments and requests for clarification addressed to infectious substances, particularly regulated medical wastes. RSPA anticipates publication of its response in the near future.

DATES: These amendments are effective on October 1, 1992.

FOR FURTHER INFORMATION CONTACT: Ms. Eileen Martin, Office of Hazardous Materials Standards, Research and Special Programs Administration, 400 Seventh St., SW., Washington, DC 20590-0001, telephone: (202) 366-4488.

SUPPLEMENTARY INFORMATION: On January 3, 1991, RSPA adopted a final rule under Docket HM-142A (56 FR 197) which: (1) Revised the definition of "etiologic agent," (2) removed the 50 milliliter (ml) exception from regulation for etiologic agents, and (3) clarified quantity limitations for etiologic agents transported aboard aircraft. On December 21, 1990, RSPA issued a final rule under Docket HM-181 (55 FR 52402) which comprehensively revised the Hazardous Materials Regulations (HMR) with respect to hazard communication, classification, and packaging

requirements and incorporated the HM-142A provisions with minor changes. A document making editorial and substantive revisions to the December 1990 final rule was published on December 20, 1991 (56 FR 66124) under Docket HM-181. The revisions contained in the latter document were primarily in response to over 250 petitions for reconsideration received on the December 21, 1990 final rule.

Following issuance of the December 1991 rule, RSPA received two petitions for reconsideration and numerous comments and requests for clarification concerning the provisions on infectious substances and regulated medical waste. RSPA is nearing completion of its evaluation of these petitions and comments which address a wide range of issues. RSPA anticipates publication of a document which responds to these petitions in the near future. However, that document will not be ready for publication prior to October 1, 1992, the date on which new requirements for infectious substances, including regulated medical wastes, would become mandatory. Therefore, in this document RSPA is extending the compliance date in 49 CFR 171.14(b), for classification and hazard communication requirements applicable to infectious substances, from October 1, 1992, to April 1, 1993.

RSPA is also correcting an error and extending the compliance date for packaging requirements for infectious substances, from October 1, 1992, to April 1, 1993. The January 3, 1991 rule had an effective date of February 19, 1991, which was extended to September 30, 1991 (56 FR 7312), and extended again to October 1, 1992 (56 FR 49830). Although the preamble language of the December 1991 final rule indicated an October 1, 1992 compliance date for new packaging requirements, this date was inadvertently omitted from the regulatory text of the final rule.

Because the amendments adopted herein correct a certain provision in the HMR, extend the compliance date of certain regulations, and impose no new regulatory burden on any person, notice and public procedure are unnecessary. For these same reasons, these amendments are being made effective without the usual 30-day delay following publication.

Rulemaking Analyses and Notices**Executive Order 12291**

This final rule has been reviewed under the criteria specified in section 1(b) of Executive Order 12291 and is determined not to be a major rule. Although the December 20, 1991 final

rule is significant under the regulatory procedures of the Department of Transportation (44 FR 11034), this document is not significant because it does not impose additional requirements, has the effect of extending a compliance date, and is similar in effect to an extension of effective date. A regulatory evaluation for the December 20, 1991 final rule is available for review in the docket.

Executive Order 12612

This action has been analyzed in accordance with Executive Order 12612 on Federalism. It has no substantial direct effect on the States, the current Federal-State relationship, or the current distribution of power and responsibilities among levels of government. Therefore, no Federalism Assessment is required.

Regulatory Flexibility Act

Based on information concerning the size and nature of entities likely to be affected by this rule, I certify that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Paperwork Reduction Act

This amendment does not impose information collection or recordkeeping requirements.

Regulation Identifier Number

A regulation identifier number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN numbers contained in the heading of this document can be used to cross-reference this action with the Unified Agenda.

List of Subjects in 49 CFR Part 171

Exports, Hazardous materials transportation, Hazardous waste, Imports, Incorporation by reference, Reporting and recordkeeping requirements.

In consideration of the foregoing, 49 CFR part 171 is amended as follows:

PART 171—GENERAL INFORMATION, REGULATIONS, AND DEFINITIONS

1. The authority citation for part 171 continues to read as follows:

Authority: 49 App. U.S.C. 1802, 1803, 1804, 1805, 1808, 1815, 1818; 49 CFR Part 1.

2. In § 171.14, paragraph (b)(2) is revised; paragraphs (b)(3), (b)(4) and (b)(5) are redesignated as (b)(4), (b)(5)

and (b)(6), respectively; and a new paragraph (b)(3) is added to read as follows:

§ 171.14 Transitional provisions for implementing requirements based on the UN Recommendations.

* * * * *

(b) * * *

(2) *October 1, 1992.* For materials poisonous by inhalation (see § 173.132 of

this subchapter), the hazard communication requirements of part 172 of this subchapter, including placarding requirements of subpart F of part 172, are effective on October 1, 1992.

(3) *April 1, 1993.* For Division 6.2 materials (infectious substances, including regulated medical wastes), all applicable regulatory requirements, including those pertaining to classification (see § 173.134 of this

subchapter), hazard communication, and packaging, are effective on April 1, 1993.

* * * * *

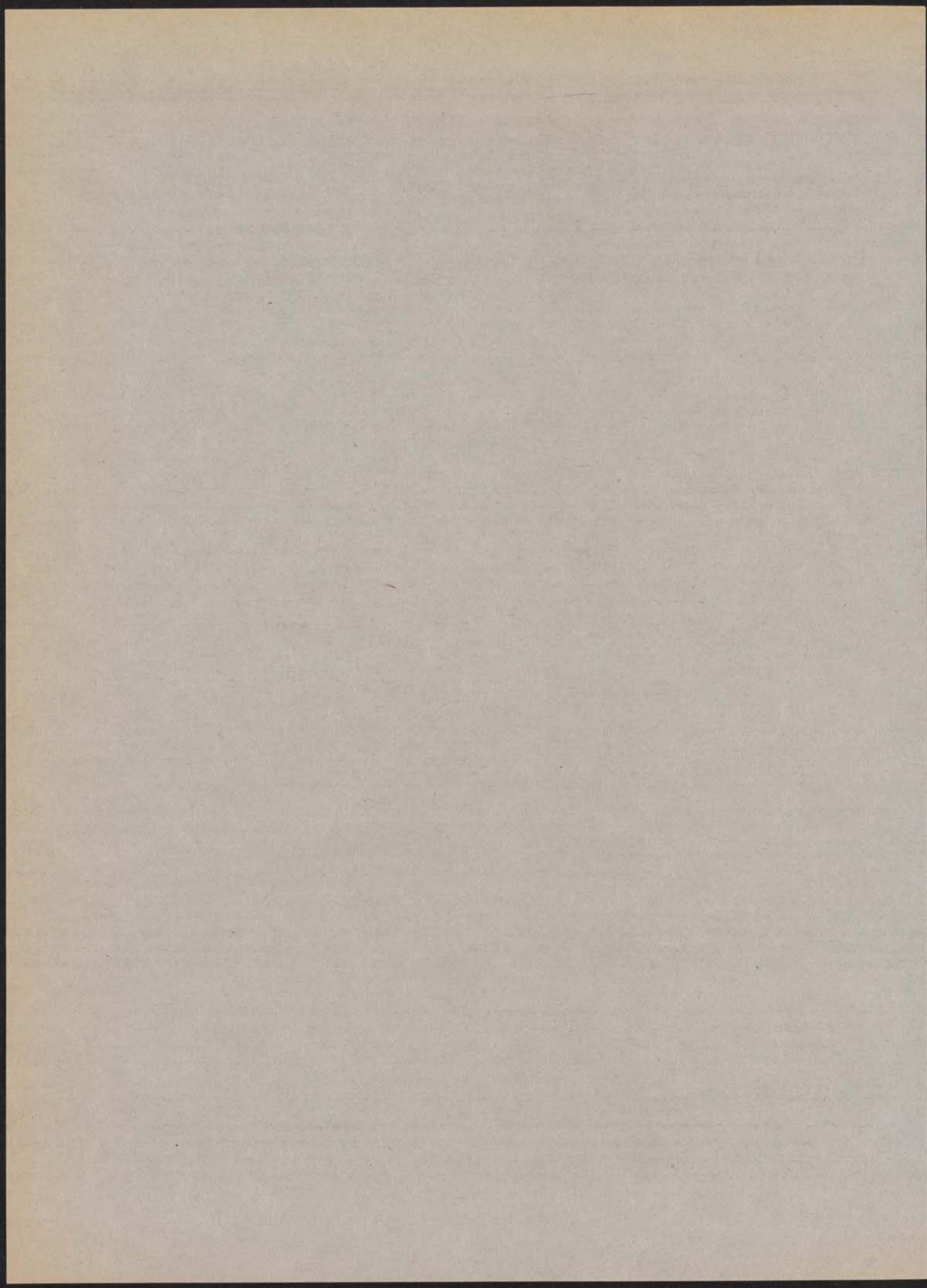
Issued in Washington, DC on September 25, 1992, under authority delegated in 49 CFR part 1.

Douglas B. Ham,

Acting Administrator.

[FR Doc. 92-23809 Filed 9-30-92; 8:45 am]

BILLING CODE 4910-60-M



Test Report Federal Register

Thursday
October 1, 1992

Part IV

Department of Transportation

Research and Special Programs
Administration

49 CFR Part 107, et al.

Hazardous Materials Regulations; Editorial
and Technical Revisions; Final Rule

DEPARTMENT OF TRANSPORTATION

49 CFR Parts 107, 171, 172, 173, 174, 176, 177, 178, 179, and 180

[Docket Nos. HM-181, HM-189, Amdt. Nos. 107-23, 171-111, 172-123, 173-224, 174-68, 176-30, 177-78, 178-97, 179-45, and 180-3]

Editorial and Technical Revisions

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Final rule.

SUMMARY: This final rule corrects editorial errors and makes minor regulatory changes to title 49 of the Code of Federal Regulations (CFR), parts 100-199, revised as of December 31, 1991. The 1991 version contained provisions of a final rule issued on December 21, 1990 and revised on December 20, 1991 which comprehensively amended the Hazardous Materials Regulations (HMR) with respect to hazard communication, classification and packaging requirements. The intended effect of this final rule is to promote accuracy through editorial and technical corrections to the CFR. This rule will not impose any new requirements on persons subject to the HMR.

DATES: Effective: October 1, 1992.

Applicability: Because of the transition period provisions in 49 CFR 171.14, the provisions of § 172.101(l)(1)(ii), which allows up to one year after a change in the Hazardous Materials Table (HMT) to use up stocks of preprinted shipping papers and to ship packages that were marked prior to the change, do not apply to these amendments.

FOR FURTHER INFORMATION CONTACT: John Gale or Beth Romo, telephone (202) 366-4488, Office of Hazardous Materials Standards, or Charles Hochman, telephone (202) 366-4545, Office of Hazardous Materials Technology, Research and Special Programs Administration, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590-0001.

SUPPLEMENTARY INFORMATION:**Background**

The Research and Special Programs Administration (RSPA) published a final rule on December 21, 1990 [Docket HM-181; 55 FR 52402] which comprehensively revised the Hazardous Materials Regulations (HMR; 49 CFR parts 171 to 180) with respect to hazard communication, classification, and packaging requirements based on the UN Recommendations. A document responding to petitions for

reconsideration and containing editorial and substantive revisions to the final rule was published on December 20, 1991 [56 FR 66124]. That document included revisions to a January 3, 1991 final rule under HM-142A and to the 1990 49 CFR parts 106-180, under HM-189.

The 1991 49 CFR parts 100-199 incorporated the revised final rule issued December 20, 1991 as well as all other revisions published prior to December 31, 1991. This document makes editorial and technical corrections to the 1991 49 CFR parts 107-180.

This document does not include revisions to requirements for infectious substances or regulated medical waste. A separate rulemaking is forthcoming which will respond to petitions for reconsideration concerning regulated medical waste and will address other issues concerning infectious substances and regulated medical waste.

These amendments in Docket HM-181 clarify and revise certain provisions of the final rule in response to petitions for reconsideration. These amendments in Docket HM-189 clarify and correct other provisions of the HMR. In both cases, these changes impose no new regulatory burden on any person and provide relief from existing requirements. Notice and public comment are unnecessary and good cause exists to make these amendments effective less than 30 days following publication.

Regulatory Review Comments

In response to the President's January 28, 1992, announcement of a federal regulatory review, DOT published a notice on February 7, 1992 [57 FR 4744] soliciting public comments on the Department's regulatory programs. In response to that notice, RSPA received numerous comments to the HMR as revised under Docket HM-181. All comments to the regulatory review have been considered in preparing this document. Based on the merit of comments received during the regulatory review, RSPA is revising certain provisions of the regulations. These revisions are discussed in detail in the section-by-section review.

Section-by-Section Review**Part 107: Hazardous Materials Program Procedures**

Section 107.315. Paragraph (c) is revised and paragraph (d) is added to set forth different procedures for payment of civil penalties, based on the amount of the penalty.

Part 171: General Information, Regulations and Definitions

Section 171.8. The definition for "NRC (non-reusable container)" was inadvertently removed in the final rule. Because a specification DOT 39 cylinder is non-reusable, and because other non-reusable packagings may be authorized in the future, RSPA is reinstating this definition.

The definition for "bulk packaging" is revised to clarify that for solids, the packaging must have a maximum net mass of greater than 400 kg (882 pounds) and a maximum capacity greater than 450 L (119 gallons). Therefore, a packaging having a maximum net mass of greater than 882 pounds must also have a maximum capacity greater than 119 gallons to be considered a bulk packaging for solids.

The definition for "non-bulk packaging" is revised to clarify that for liquids, the maximum capacity of the packaging must be less than 450 L (119 gallons) and for solids the maximum net mass of the packaging must be less than 400 kg or a maximum capacity of less than 450 L.

In addition, the definition for "oxidizer" is revised to correct a section reference to "§ 173.127" and the second definition of oxidizer is removed.

Section 171.12. Paragraph (b)(7) is revised for clarity.

Section 171.12a. Paragraph (b) is revised to clarify provisions for shipments of hazardous materials transported to or through the United States which have been prepared in accordance with Canadian regulations.

Section 171.14. Paragraphs (a) and (b) are revised to clarify the applicable transition dates for the final rule as revised December 20, 1991 and by this document. Language is added to paragraph (a) clarifying that other rules issued during the transition periods may implement requirements earlier or later than the transition dates.

In paragraph (c)(2), RSPA is permitting the use, for highway transportation only, until October 1, 2001, of pre-October 1991 placards or placards specified in the December 21, 1990 final rule (which contains minor deviations from the placards adopted in the December 20, 1991 rule) in place of the placards adopted in the December 20, 1991 rule. This extended conversion period applies to highway transportation only and does not include intermodal shipments. The extension will minimize the impact of converting to the new placarding system and responds to petitions from motor carriers.

Part 172: Hazardous Materials Table, Special Provisions, Hazardous Materials Communications Requirements and Emergency Response Information Requirements

Section 172.101: The Hazardous Materials Table (The Table). The Table is amended as follows:

a. The entries "Azido hydroxy tetrazole (mercury and silver salts)" and "Dinitroglycoluril" are removed. The entry "Sodium hydrogen sulfate, solid" is removed because the material in its solid state does not meet any hazard class definition.

b. The "Asbestos" entries referencing blue or brown asbestos and white asbestos are removed and a generic "Asbestos" entry is added for domestic transportation only, which will allow the use of either the domestic shipping name or the international shipping name for the transportation of all forms of asbestos in the US.

c. The entry "Acrolein, inhibited" is corrected by removing the "+" in Column (1).

d. The entry "Aerosols, poison, each not exceeding 1 L capacity" is revised by removing Special Provision 3 from Column (7) because the provision is not consistent with the hazard class and only Division 6.1 Packing Group III materials are authorized in aerosols.

e. The entry "Aircraft hydraulic power unit fuel tank (containing a mixture of anhydrous hydrazine and monomethyl hydrazine (M86 fuel))" is revised by removing the "D" in Column (1) and revising the identification number in Column (4) to read "UN 3165" for consistency with international requirements.

f. The entry "Alcoholic beverages" is revised by adding a Packing Group II entry in Column (5). This addition is necessary because many alcoholic beverages fall within the Packing Group II level for Class 3.

g. The entry "Alkali metal alloys" is revised by adding Special Provision B48 in Column (7) to except portable tanks in sodium metal service from hydrostatic testing requirements.

h. The domestic entry "Ammonia anhydrous liquefied or Ammonia solutions" is revised by adding commas to read: "Ammonia, anhydrous, liquefied or Ammonia solutions".

i. The entry "Ammonium nitrate, liquid (hot concentrated solution)" is revised by removing Special Provision B17 in Column (7). The purpose of this change is to remove the requirement that bulk packagings must be made from aluminum.

j. The entry "Barium peroxide" is corrected by removing the "2" in Column (8C) and replacing it with "242".

k. The entry "Blue asbestos (Crocidolite) or Brown asbestos (amosite, mysorite)" is revised by adding an "I" in Column (1).

l. In Column (9A), for the entry "Bombs, with bursting charge" in Division 1.1F, the spelling of "Forbidden" is corrected.

m. Based on the merit of petitions, Special Provision 19 is added in Column (7) for "Butane or Butane mixtures" and "Butylene" to permit the use of the identification number "UN1075" as an alternative to the identification number assigned, as long as the identification number is consistent on package markings, shipping papers and emergency response information.

n. The entries "Carbon dioxide and nitrous oxide mixtures" and "Carbon monoxide" are corrected by revising Column (8C) of each entry to read "314, 315".

o. The entry for "Combustible liquid, n.o.s." is moved to its proper alphabetical sequence.

p. The entries "Corrosive solids, self heating, n.o.s." and "Corrosive solids, which in contact with water emit flammable gases, n.o.s." are revised by removing "241" from Column (8C) and replacing it with "243". This revision is necessary in order to provide packagings that are equivalent to other materials in the same hazard classes.

q. The entry "Diethylaminopropylamine" is revised by removing the "AW" in Column (1) to correspond with § 173.154 for consistency.

r. The entry "Dimethylhydrazine, unsymmetrical" is revised by removing Special Provision B58 and adding Special Provision B74 in Column (7) to provide consistency with requirements imposed on other materials poisonous by inhalation in Hazard Zone B.

s. The entry "Fish meal or Fish scrap stabilized" is editorially revised by changing the proper shipping name to read "Fish meal, stabilized or Fish scrap, stabilized" and by removing Special Provision A1 from Column (7).

t. The entry for "Fusee" is moved to its proper alphabetical sequence.

u. The entries "Hydrochloric acid, solution" and "Sulfuric acid" are revised by changing Special Provision B2 to B3 in Column (7) to prohibit the use of DOT 57 portable tanks. Special Provision B2 was amended in the December 20, 1991 revised final rule to permit the use of DOT 57 portable tanks, and Special Provision B3 was added which prohibited the use of these portable tanks. In the revised final rule, for

hydrochloric acid and sulfuric acid, Special Provision B3 should have replaced B2 to reflect this prohibition. This is consistent with pre-HM-181 requirements which authorized DOT 57 portable tanks only for cleaning compounds, not hydrochloric acid solutions or sulfuric acid.

v. Special Provision B35 is added in Column (7) for the entry "Hydrogen cyanide, anhydrous, stabilized" to authorize an alternative shipping name "Hydrocyanic acid" to be marked on a tank car.

w. The entry for "Hydrogen peroxide, aqueous solutions", containing between 40% and 60% hydrogen peroxide, is editorially revised by correcting Special Provision "BB53" to read "B53".

x. The entry "Hydroxylamine sulfate" is revised by removing the "AW" in Column (1) to correspond with § 173.154 for consistency.

y. A cross reference "Isobutane or Isobutane mixtures see also Petroleum gases, liquefied" is added to clarify that either name may be used as a proper shipping name. In addition, Special Provision 19 is added in Column (7) for "Isobutane" to permit the use of the identification number "UN1075", as an alternative to the identification number assigned as long as the identification number is consistent on package markings, shipping papers and emergency response information.

z. The entry "Isophoronediamine" is revised by removing the "AW" in Column (1) to correspond with § 173.154 for consistency.

aa. The entry "Lead compounds, soluble, n.o.s." is editorially revised by changing the packing group in Column (5) to read "III" and by revising Column (6) to read "KEEP AWAY FROM FOOD".

bb. The entry "Metal powders, flammable, n.o.s." in Packing Group III is editorially revised to correct the bulk packaging authorization in Column (8C) to read "240".

cc. The entry "Methanol or Methyl alcohol" is editorially revised to correct the bulk packaging authorization in Column (8C) to read "242".

dd. The entry "Methylhydrazine" is editorially revised to correct the non-bulk packaging authorization in Column (8B) to read "226".

ee. The entries "Nitrating acid mixtures with not more than 50 per cent nitric acid" and "Nitrating acid mixtures with 50 per cent or more nitric acid" are revised by adding Special Provision B47 in Column (7).

ff. The entry "PCB see Polychlorinated biphenyls" is revised by removing the "D" in Column 1 and adding "AW" for

consistency with the referenced entry "Polychlorinated biphenyls".

gg. The entry "Phosphorous pentasulfide" is corrected, based on the merit of a petition requesting consistency with materials of similar hazards, by revising the bulk packaging authorization in Column (8C) to read "242".

hh. Special Provision 19 is added in Column (7) for "Propane" to permit the use of the identification number "UN1075" as an alternative to the identification number assigned as long as the identification number is consistent on package markings, shipping papers and emergency response information.

ii. The entry "1,2-Propylenediamine" is revised to correctly assign Packing Group II and reference the non-bulk packaging authorization "202". These corrections are consistent with UN provisions.

jj. The entry "Silicon tetrachloride" is revised by removing Special Provision N41 from Column (7) because this material does not pose an additional transportation hazard when packaged in certain metal packagings.

kk. In Column (7), for the entry "Sodium", Special Provision B48 is added to except sodium metal in portable tanks from hydrostatic testing requirements, and Special Provision T28 is removed and replaced with Special Provision T46 in appropriate alphabetical order.

ll. The entry "Sodium bisulfate, solid or solution, see Sodium hydrogen sulfate, solid, or solution" is revised to read "Sodium bisulfate, solution, see Sodium hydrogen sulfate, solution". RSPA has determined that this material in its solid state does not meet the definition of a Class 8 PG III material.

mm. The entry "Substances which in contact with water emit flammable gases, solid, n.o.s." in Packing Group III is editorially revised by changing the bulk packaging authorization in Column 8(C) from "242" to "241".

nn. The entry "Sulfuric acid, fuming less than 30 percent free sulfur trioxide" is revised by removing "POISON" as a subsidiary hazard label in Column (6) because this material is not poisonous below their concentration.

oo. Special Provision B13 is added in Column (7) for the entry "Tars, liquid including road asphalt and oils, bitumen and cut backs" in both Packing Groups II and III to authorize certain non-specification bulk packagings.

pp. The entry "Titanium tetrachloride" is revised, based on the merit of petitions, by adding Special Provision B77 in Column (7), which authorizes other approved packagings.

qq. The entry (mono-(Trichloro) tetra-) monopotassium * * * is revised by removing the parenthesis preceding the first "mono".

rr. The entry "Vanadium trichloride" is revised by removing the "AW" in Column (1) to correspond with § 173.154 for consistency.

ss. Based on the merits of a petition, the entry "Vinyl chloride" with identification number "NA1086" and Special Provision 21 is added for domestic transportation only. Addition of this entry allows "Vinyl chloride" to be transported with or without an inhibitor, provided the requirements of Special Provision 21 are satisfied. This entry is separate from the entry for "Vinyl chloride, inhibited".

tt. The entry "White asbestos (chrysotile, actinolite, anthophyllite, tremolite)" is editorially revised to indicate that "[chrysotile, actinolite, anthophyllite, tremolite]" are not part of the proper shipping name.

The Air Transport Association requested that RSPA add an entry to the Table "Cosmetics, n.o.s., containing flammable aerosol and/or non-flammable aerosol and/or flammable liquid in small inner packagings" for consistency with the ICAO Technical Instructions. However, RSPA does not believe that maintaining consistency with ICAO is adequate justification for adopting piecemeal revisions, such as this entry. RSPA already offers limited quantity and consumer commodity exceptions for flammable liquids and aerosols. International consistency could be attained through a more fundamental approach, such as adopting consumer commodity provisions in international regulations.

Section 172.101 Appendix. In paragraph 2. of the appendix to § 172.101, the section reference is editorially revised to read "§ 172.101(c)(8)".

Section 172.102. Special Provision 4 is corrected to reference "Hazard Zone D". Special Provision 19 is added to allow the use of either the specific identification number assigned to a material or "UN1075" (the number assigned to "Petroleum gases, liquefied") for liquefied petroleum gases such as propane, butane, isobutane and butylene. Special Provision 21 is added to provide guidance as to when vinyl chloride that does not contain an inhibitor may be transported using the proper shipping name "Vinyl chloride".

Based on the merit of a petition, Special Provisions B2, B3, B4, and B10 are revised to prohibit the use of MC 300, MC 301, MC 302, MC 303, and MC 305 cargo tanks. This revision is consistent with the prohibited use of an

MC 306 cargo tank. A new Special Provision B13 is added to provide relief from certain packaging requirements for liquid asphalts having a flash point below 37.8°C (100°F).

RSPA received several requests to revise Special Provision B14. RSPA is revising B14 to clarify that the requirement for tank and jacket protective coatings applies only to new construction or repair and is not a retrofit requirement. Other revisions to B14 are beyond the scope of this document and may be addressed in a future rulemaking.

The last two sentences in Special Provision B26 are revised for clarity. RSPA is adding Special Provision B35, based on the merits of a petition, to allow the alternative marking "Hydrocyanic acid, liquefied" on tank cars containing hydrogen cyanide. A new Special Provision B47 reinstates a provision of the pre-HM-181 regulations, which permits a safety relief device with a start-to-discharge pressure setting of 310 kPa (45 psig) for nitrating acid mixtures. Special Provision B69 is revised to include covered motor vehicles and portable tanks as authorized bulk packagings for solid sodium cyanide. Several "T" notes are editorially revised to facilitate use of the IM Tank Configurations.

Section 172.203. The phrase "or class entry" is added in paragraph (m)(1). The effect of this change is that the word "poison" does not need to be annotated in association with the basic shipping description if the hazard class entry indicates the material is a poison (i.e., a Division 6.1 material).

Section 172.312. The depiction of the ISO Standard orientation marking in the December 20, 1991 final rule displays more than the minimal ISO standard mark, which does not have a rectangular border surrounding the arrows. Therefore, a sentence is added in paragraph (a)(2) to clarify that a rectangular border around the orientation arrows is optional.

Section 172.330. The paragraph (a) heading is revised to include "identification number".

Section 172.405. The introductory text in paragraph (a) is revised to clarify that when use of text indicating a hazard is optional, this option applies to both primary and subsidiary labels.

Section 172.422. The correct SPONTANEOUSLY COMBUSTIBLE label is published, which indicates that the red color in the lower half of the label extends to the dotted line border.

Section 172.504. Paragraph (c) is revised to allow the 454 kg (1,001 pounds) placarding exception for any

material covered in Table 2 other than those materials which are poisonous by inhalation. This will eliminate the requirement to placard for other Table 2 hazardous materials which are on a transport vehicle, but have an aggregate gross weight of less than 454 kg (1,001 pounds). For example, as prescribed in § 172.505(a), any material which is poisonous by inhalation and also meets another hazard class must be placarded in accordance with § 172.504, regardless of the aggregate gross weight. This revision modifies the legal interpretation to the Illinois Department of Transportation issued by RSPA's office of the Chief Counsel, Int. No. 88-1-RSPA issued on February 2, 1987 and published in the *Federal Register* on February 26, 1990 [55 FR 6758].

Paragraph (f)(1) is revised to require only the placard having the lowest division number on a transport vehicle, rail car, freight container or unit load device that contains more than one explosives division. Paragraph (f)(4) is revised to except OXIDIZER placards on transport equipment which are placarded for Division 1.1 and 1.2 explosives. A new paragraph (f)(10) is added to permit the use of a POISON placard in place of a KEEP AWAY FROM FOOD placard.

Comments received from shippers and carriers and their representatives following publication of the final rule and during the regulatory review stated that the Class 9 placard is unnecessary and unduly burdensome in domestic transportation. RSPA agrees with these comments and a domestic exception from the Class 9 placarding requirements is added as paragraph (f)(9). Under this exception, Class 9 placards are not required for domestic transportation. Bulk packages must be marked on both sides and both ends with the appropriate identification number displayed on orange panels or white-square-on-point display configurations, as specified in § 172.336(b). This permits continued use of a method of communication that has been required for ORM materials since 1980.

Section 172.505. The revision to paragraph (a) is the December 20, 1991 revised final rule was intended to mean that duplication of the POISON or POISON GAS placards to indicate a subsidiary poisonous-by-inhalation hazard was not necessary if POISON or POISON GAS placards were already displayed. The wording of the revision unintentionally raised the question of whether the exception in § 172.504(c)(1) might apply to a material meeting another hazard class definition in

addition to poisonous by inhalation. Paragraph (a) is revised to clarify that the placarding exception in § 172.504(c)(1) is not applicable to dual hazard materials which are subject to § 172.505 (e.g., a material poisonous by inhalation).

Section 172.510. Paragraph (e) is revised for consistency with new terminology and a section reference is corrected in paragraph (c).

Section 172.519. Paragraph (b)(3) is revised to require the use of the text "OXYGEN" on OXYGEN placards, for consistency with the OXYGEN labeling requirement.

Section 172.526. In paragraph (a)(4), the section reference "§ 172.540", which was inadvertently omitted from the list of placard specification sections, is added in appropriate numerical sequence.

Section 172.560. Paragraph (b) is revised to clarify requirements for the Class 9 placard.

Part 173: Shippers, General Requirements for Shipments and Packagings

Section 173.2 The section reference for the entry "Oxidizer" is corrected to read "§ 173.127".

Section 173.22. In paragraph (a)(4), a section reference "§ 178.2(d)" is corrected to read "§ 178.2(c)".

Section 173.23. Paragraph (c) is corrected by removing "i.e." and replacing it with "e.g."

Section 173.24a. Paragraph (c)(1)(iii) is revised to provide an exception to the requirement for corrosive materials in bottles to be further packed in inner receptacles and outer packagings if the corrosive materials have been reclassified as ORM-D.

Section 173.28. Provisions for the reuse of non-reusable containers (NRC) are reinstated as a new paragraph (e).

Section 173.31. Two references are editorially revised in Notes I and N following Retest Table I in paragraph (c).

Section 173.32. Paragraphs (a)(1), (a)(3), (a)(5) and (c) are editorially revised to correct section references and to provide clarity.

Section 173.32c. A section reference in paragraph (f) is revised to correct a printing error. A new paragraph (r) is added to correct a previous oversight. The December 21, 1990 final rule relocated the provisions contained in the IM Tank Table, which was a separate publication, into the HMR. In the IM Tank Table, hazardous materials authorized for transport in a tank having bottom outlets with serial mounted closures also were permitted to be transported in a tank having no bottom

outlets or having bottom outlets with serial mounted closures of a comparable configuration. This authorization was inadvertently omitted in the final rule. This oversight is corrected herein; the provision is added in new paragraph (r).

Section 173.33. Paragraph (c)(1)(iii) is revised to correct a section reference and the phrase "Poison B" in paragraphs (c)(5) and (e) is replaced with UN hazard class terminology.

Section 173.115. The definition for a Division 2.2 (nonflammable) gas is revised to clarify that the definition includes absolute pressure greater than 280 kPa (41 psia) at 20°C (68°F).

Section 173.120. Paragraphs (b)(1) and (b)(2) are editorially revised by removing the phrase "except Class 9". This amendment is consistent with the revision of the Class 9 definition in this document, which clarifies that a material which meets the definition of another hazard class, but also falls within one of the Class 9 criteria (e.g., hazardous substance), does not meet the definition of Class 9. Therefore, a Class 3 liquid which also meets the definition of a hazardous substance may be reclassified as a combustible liquid or shipped as a limited quantity.

Section 173.124. Paragraph (a)(3)(ii) is revised to correctly reference the burning rate test contained in appendix E to part 173.

Section 173.133. The second entry in Column 4 of the paragraph (a)(1) table is corrected to indicate the correct toxicity limits, and the table in paragraph (a)(2)(i) is revised to include Packing Group II and III materials. In addition, in paragraph (a)(2)(ii), the figure 1 Inhalation Toxicity chart is republished because the Figure 1 appearing in the 1991 CFR is not the correct Figure 1 published in the December 20, 1991 revised final rule.

Section 173.140. The definition of Class 9 is editorially corrected and reprinted in its entirety, including the amendments issued under Docket HM-198A, for convenience of the reader.

Section 173.150. Paragraph (a) is editorially revised for the same reasons as discussed under the review of § 173.120 and to provide clarity.

Section 173.154. Several commenters suggested that the provisions of § 173.154(d) be revised to except from the HMR certain materials corrosive only to steel or aluminum when packaged in containers constructed of materials compatible with lading. RSPA agrees, and the provisions of paragraph (d) have been revised to make it clear that (1) materials corrosive only to aluminum are not regulated when transported by rail or highway in bulk or

non-bulk packagings; and (2) materials corrosive only to steel are not regulated when transported by rail or highway in bulk packagings. These exceptions apply only if the offeror has determined that the packaging is compatible with the lading, as specified in § 173.24(e).

Section 173.156. In the December 20, 1991 revised final rule, RSPA accepted two petitions to allow domestic-only shipments of ORM-D materials unitized in stretch-wrapped floor display stands or wire-bound shrouded pallets to exceed the 30-kg gross weight limit. RSPA did not address the petitioners' request that, based on current industry practices, this exception be broadened to apply to shipments going directly from a manufacturer to a distribution center or retail outlet or returning. Commenters to the regulatory review asked RSPA to revise § 173.156 to remove the 66-pound weight limit on ORM-Ds to allow shipment of display packs without shipping papers. Alternatively, commenters suggested RSPA should remove any limitation on exclusive use by common carrier and allow transportation by highway carrier from any point of origin to any point of destination. RSPA already had removed the weight limit for ORM-D but not limited quantity shipments. RSPA disagrees with petitions requesting that either unitized ORM-D shipments be allowed to be transported by common carrier not under exclusive use or that RSPA waive the 30-kg (66-pound) gross weight limit for limited quantity shipments. RSPA believes safety could be compromised by the intermixing of shipments of this type with LTL traffic normally handled by common carriers. Therefore, RSPA will not permit non-exclusive use by common carrier, nor will it lift the 30-kg (66-pound) weight limit on limited quantity shipments. However, RSPA is broadening points of origin and destination to include manufacturers and return shipments. RSPA is revising paragraph (b) to include these types of activities in the exception for unitized shipments and clarifies that a box would be an acceptable overpack.

Section 173.159. UN standard 1D plywood drums, 1G fiber drums, 1H2 plastic drums, 3H2 plastic jerrycans, and 4H2 solid plastic boxes are added as authorized packagings in new paragraphs (b)(3) through (b)(6) to correct an earlier oversight. In addition, the word "articles" is corrected to read "materials" in paragraph (c).

Section 173.193. Paragraph (d) is revised to except methyl bromide from the requirements of § 173.40.

Section 173.211. Paragraph (c) is editorially revised to correct

authorizations for 6HA1 and 6HA2 composite packagings.

Section 173.225. Authorization for use of DOT 412 cargo tanks has been added in paragraph (e)(2), and paragraphs (e)(3) and (e)(4) have been restructured to more accurately reflect their applicability.

Section 173.227. The introductory text in paragraph (b) is editorially revised to specify that a 1H1 plastic drum or 6HA1 composite packaging must be further packed in a 1A2 or 1H2 drum.

Section 173.244. The section heading is revised by adding a reference to Division 4.3 (dangerous when wet) materials.

Sections 173.302 and 173.304. Paragraph (a)(5)(iii) in § 173.302 is editorially revised to correct reference to Federal Specification RR-C-901c. In addition, paragraph (b) in § 173.302 and paragraph (g) in § 173.304 are revised to limit conformance with § 173.40 Division 2.3 materials in Hazard Zone A.

Section 173.304. In paragraph (f)(1), references to DOT Specification fiberboard and wooden boxes are removed and replaced with an authorization for use of strong, tight packagings.

Section 173.314. In the December 20, 1991 revised final rule, RSPA amended § 173.24b(a)(3) to apply a five percent outage requirement to all materials poisonous by inhalation. RSPA subsequently has received several inquiries concerning the applicability of the five percent outage requirement for anhydrous ammonia. One company stated that a five percent outage requirement or anhydrous ammonia would be inconsistent with RSPA's earlier position, noting that:

[t]hroughout the rulemaking proceeding, DOT has clearly stated their intention to improve the hazard communication for anhydrous ammonia with the "Inhalation Hazard" making requirement, not to increase the transportation costs of the product.

RSPA initially proposed classification criteria for poisonous gases in Notice 87-4 (May 5, 1987; 52 FR 16482) which resulted in significant controversy over the proposed reclassification of anhydrous ammonia from a Division 2.2 (non-flammable gas) to a Division 2.3 (poisonous gas) material. Commenters to this proposal stated that the reclassification would impose severe economic constraints and impose unwarranted increased transportation charges and insurance rates. Based on a regulatory analysis, RSPA eventually withdrew its proposal to reclassify anhydrous ammonia and retained the Division 2.2 (non-flammable gas)

classification for domestic transportation.

In other previous rules, RSPA has recognized the need for improved packagings for materials posing acute health risks, such as anhydrous ammonia and other materials poisonous by inhalation. Such packaging improvements would include crashworthiness (packaging survivability) in accidents. In addition, RSPA and the Federal Railroad Administration (FRA) consider it necessary to require sufficient outage in tank cars so that, even under extreme but credible scenarios, there will be no release of a hazardous material from the expansion of the lading.

In response to the recent inquiries, RSPA and FRA have calculated the permissible filling limits for anhydrous ammonia under both the pre-HM-181 regulations and the new requirements. Based on these calculations, RSPA is authorizing a two percent outage calculated at the reference temperature of 41°C for insulated tank cars and 46°C for non-insulated tank cars to assure a level of safety commensurate with public interest. For example, the revised requirements in paragraph (c) will allow 4,870 pounds more for an insulated tank car and 4,793 pounds more for a non-insulated tank car for a hypothetical tank capacity of 33,625 gallons loaded in the summer. Prior to publication of the final rule, the basis for the filling limits was developed from limited empirical data. In developing provisions for filling limits in the Docket HM-181 final rule, RSPA considered seasonal factors because of the broad temperature ranges in the United States. For example, in the months of November through March, shippers may load anhydrous ammonia in non-insulated tank cars so that the tanks would become "liquid full" at about 35.5°C (96°F). For this reason, the provisions in revised paragraph (c) will not allow as much anhydrous ammonia in tank cars filled in the winter months as with previously authorized under the pre-HM-181 regulations. RSPA also is changing the filling limits for other Division 2.3 Zone D materials consistent with those limits for anhydrous ammonia.

Recent inquiries did not address the filling limits of anhydrous ammonia in DOT 106 multi-unit-tank cars. Calculations indicate that even at a five percent outage, more anhydrous ammonia is allowed in the multi-unit tank cars under the new requirements than under the pre-HM-181 regulations. Since the pre-HM-181 regulations were unusually restrictive, RSPA and FRA

will not change the reference in Note 21 at this time.

In addition, use of a 109A tank car for ammonia solutions between 35 and 50 percent ammonia by mass is authorized. This authorization was inadvertently omitted in the December 21, 1990, final rule.

Section 173.315. Notes 3, 11, and 16 in paragraph (a) are editorially revised for clarity. Paragraphs (d) and (i)(12) are revised to correct section references.

Section 173.336. The section heading and introductory text are editorially revised to reflect the correct proper shipping names specified in the § 172.101 HMT.

Part 174: Carriage by Rail

Section 174.25. In the § 174.25 Table, the placard endorsement for a Division 1.6 material is changed from "Dangerous" to "None".

Section 174.55. Paragraph (c) is editorially revised to reference new orientation markings.

Section 174.61. Paragraph (c) is revised to reflect a change in the Federal Railroad Administration's approval authority.

Section 174.81. The Segregation Table and paragraph (e)(5) are revised to allow ammonium nitrate fertilizer to be loaded or stored with Division 1.5 (blasting agents) material. In addition, in the revised final rule, an "O" correctly appeared at the intersection of the row entitled "Flammable liquids" and the column entitled "5.1", but the "O" did not appear in the reverse intersection. In this document, the Segregation Table is editorially revised to add an "O" at the intersection of the row entitled "Oxidizers" and the column entitled "3". Paragraph (f) also is corrected to allow the shipment of detonators and high explosives in accordance with § 177.835(g).

Section 174.82. Paragraph (a) is revised to except Division 1.6 (explosive) materials from handling requirements.

Section 174.85. Paragraph (b) is editorially revised to clarify that Class 7 materials also must conform with the train position requirements of paragraph (d).

Part 176: Carriage by Vessel

Section 176.83. The text of paragraphs (c)(2)(i)(A) and (c)(2)(i)(B) is switched to indicate the correct meaning of each pictorial display.

Section 176.600. The phrases "Poison A" and "Poison B" are replaced with UN hazard class terminology.

Part 177: Carriage by Public Highway

Section 177.805. The section is editorially revised by removing the paragraph (a) designation.

Section 177.848. The Segregation Table and paragraph (e)(5) are revised to allow ammonium nitrate fertilizer to be loaded or stored with Division 1.5 (blasting agents) material. In addition, in the revised final rule, an "O" correctly appeared at the intersection of the row entitled "Flammable liquids" and the column entitled "5.1", but the "O" did not appear in the reverse intersection. In this document, the Segregation Table is editorially revised to add an "O" at the intersection of the row entitled "Oxidizers" and the column entitled "3". Paragraph (f) also is corrected to allow the shipment of detonators and high explosives in accordance with § 177.835(g).

Part 178: Specifications for Packagings

Section 178.44-15. Paragraph (a)(2) is reserved.

Section 178.45-7. Paragraph (c)(2) is reserved.

Section 178.270-5. Paragraphs (a), (c), and (d) are corrected by removing the wording "deka newtons" and replacing it with "decanewtons".

Section 178.337-1. A section reference in paragraph (b) is corrected.

Section 178.337-11. A date in paragraph (a)(4)(i)(B) is corrected.

Section 178.345-2. A reference to an ASTM standard in paragraph (a)(2) is corrected.

Section 178.345-11. Paragraph (a) is revised to remove inference that a loading/unloading outlet may not be used for other purposes. Changes are made to paragraph (b)(2) to clarify that the lading is discharged into the cargo tank through internal piping situated above the maximum liquid level of the tank. Prior to publication of a June 17, 1991 final rule (Docket HM-183, 56 FR 27877), former § 178.345-11(b)(2) stated that any loading/unloading connection extending beyond the prescribed stop valve which is part of a self-closing system "must be fitted with another stop-valve or other leak-tight closure at the end of such connection" (55 FR 37062, September 7, 1990). In the June 17 final rule, § 178.345-11 was reorganized for clarity and paragraph (b)(2) was revised and redesignated as paragraph (c). Through an oversight, the wording "or other leak-tight closure" was omitted in the revised rule and is corrected herein.

In addition, the phrase "Poison B liquids" is replaced with UN hazard class terminology.

Section 178.507. Paragraph (a) is corrected by removing "ID" and replacing it with "1D".

Section 178.601. In paragraph (h), a reference is corrected to include § 178.504.

Section 178.603. Paragraph (a) has been revised to specify that for other than flat drops, the center of gravity of the test packaging must be vertically over the point of impact. The UN Recommendations, as well as the ICAO Technical Instructions and the IMDG Code, require that the center of gravity be vertically over the point of impact. RSPA had originally specified only that a packaging be dropped "diagonally." However, based on petitions for reconsideration and comments to the amendments and corrections of December 20, 1991, RSPA recognizes that a drop with the center of gravity vertically over the point of impact is the most severe test. To permit drops in other orientations is inconsistent with the international requirements, and could allow certification of packagings which do not provide the desired structural integrity. While RSPA had previously stated a belief that a drop test with the center of gravity over the point of impact would be difficult to achieve, RSPA now believes that such an orientation can be and is being achieved in testing of all types of packagings. In addition, there has been some confusion over the number of samples which must be used for performance of the drop test. The intent of paragraph (a) is to require that six sample drums be drop tested, and five sample boxes be tested, etc. One sample cannot be tested five or six times to meet the requirements of this section. Therefore, the heading of the second column of the table in paragraph (a) has been changed to clarify this requirement.

Section 178.606. The requirement in paragraph (d) for the assessment of a packaging's stacking stability has been misinterpreted. The intent of this provision is that, in instances such as guided load tests where stacking stability cannot be assessed during the stacking test, an additional stacking stability assessment must be performed. This additional stacking stability assessment consists of stacking two identically filled packages on the test packaging, and having them maintain their position for one hour. Since this is part of the actual test procedure, paragraph (c) has been modified to specifically require that the stacking stability assessment procedure be performed whenever a guided load test is used. Reference to this stacking

stability assessment procedure has been removed from paragraph (d). Where the stacking test is performed using actual stacked packages, the stacking stability assessment procedure is not required.

Appendix B to Part 178. In the amendments and corrections published December 20, 1991, the alternative leak test procedure known as the "T-zone" test was added for metal drums. This test procedure is intended to be used only as a production testing method, not as a design qualification test. However, by placing the "T-zone" test in appendix B to part 178 without qualification, RSPA inadvertently authorized this test as an alternative for design qualification as well as production testing. Paragraph (4) of appendix B has been changed to limit the use of the alternative test procedure known as the "T-zone" test to other than design qualification testing.

Part 179: Specifications for Tank Cars

Section 179.101-1. The appropriate footnotes for each minimum plate thickness entry for Class DOT cars are moved to follow each entry to clarify that they are footnotes. In addition, for Class DOT 112A200W cars, the footnote "1" is removed as it is inconsistent with footnote "3", which remains.

Section 179.200. Paragraph (b)(4), which requires tank cars equipped with non-closing pressure relief devices to be marked "NOT FOR FLAMMABLE OR POISONOUS LIQUIDS", is removed as it is inconsistent with the marking requirement in § 173.31(a)(15), which allows certain poisonous liquids in tank cars with a non-closing pressure relief device. Part 179 requires tank cars equipped with non-closing pressure relief devices to have the marking "NOT FOR FLAMMABLE OR POISONOUS LIQUIDS" applied to the tank; whereas, part 173 allows certain poisonous liquids in tank cars with a non-closing pressure relief device. Since this marking applies only to rail transportation, is inconsistent with other modes of transport, and is applied for the sole use of the shipping community, § 179.200-18(b)(4) is removed for regulatory consistency thereby leaving the marking requirement to the private sector if the need arises.

Part 180: Continuing Qualification and Maintenance of Packaging

Section 180.403. A section reference in the definition for "corrosive to the tank/valve" a section reference is corrected.

Section 180.405. A section reference in paragraph (g)(2) is corrected.

Section 180.407. Paragraph (d)(2)(vii) states that, as part of the periodic external visual inspection, a cargo tank motor vehicle must conform to parts 393

and 396 of the Federal Motor Carrier Safety Regulations (FMCSR) and, where appropriate, part 571 of the Federal Motor Vehicle Safety Standards (FMVSS). This provision is redundant with § 177.834 which requires motor carriers and other persons subject to part 177 to comply with the FMCSR. Part 571 of the FMVSS applies to newly manufactured vehicles and not to the continuing qualification of a vehicle. For these reasons, paragraph (d)(2)(vii) is removed and reserved.

Section 180.409. Paragraph (b) is revised to clarify that an employee, who is not a Registered Inspector, may perform hydrostatic or pneumatic pressure tests under certain specified conditions, but external and internal visual inspections must be done by a Registered Inspector.

Section 180.413. In a final rule published on September 7, 1990, at 55 FR 37069, the amendatory language to § 180.413 incorrectly stated that paragraph "(d)(1)(v)" was revised instead of stating "(d)(2)(v)" was revised. The revised text allowing the use of a supplemental specification plate on stretched or rebarrelled cargo tanks appears in the September 7 publication but not in the 1991 edition of the CFR. The CFR contains an editorial note following the section stating that RSPA would publish a document in the *Federal Register* to clarify the agency's intent. The error is corrected herein.

Section 180.415. Paragraph (b) pertaining to the display of periodic test and inspection markings on cargo tank motor vehicles is revised to clarify that the date must be readily identifiable with the applicable test or inspection and to permit other arrangements other than the date followed by the type of test or inspection. In the last sentence in paragraph (c), the wording "constructed to different intervals" is revised to read "constructed to different specifications, which are tested and inspected at different intervals." This wording was inadvertently omitted in a June 17, 1991 final rule (Docket HM-183, 56 FR 27877, also see *Federal Register* publication dated September 7, 1990, page FR 37062).

Rulemaking Analyses and Notices

A. Executive Order 12291

This final rule has been reviewed under the criteria specified in section 1(b) of Executive Order 12291 and is determined not to be a major rule. Although the underlying rule was considered to be "significant" under the regulatory procedures of the Department of Transportation, this document is considered to be "non-significant" because it clarifies and corrects

provisions of the final rule and provides consistency. This final rule does not impose additional requirements and, in fact, provides relief in some areas. The net result is that costs imposed under the final rule published in the *Federal Register* on December 21, 1990 are reduced, but without a reduction in safety [55 FR 52402]. The original regulatory evaluation of the final rule was reexamined but was not modified because the changes made under this rule provide limited relief and thus will result in minimal economic impact on industry.

B. Executive Order 12612

This action has been analyzed in accordance with Executive Order 12612 ("Federalism"). The HMTA contains an express preemption provision which RSPA is implementing at the minimum level necessary to achieve the objectives of the statute. Therefore, preparation of a Federalism Assessment is not warranted.

C. Impact on Small Entities

Based on limited information concerning size and nature of entities likely to be affected by this rule, I certify this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A regulatory flexibility analysis is available for review in the docket.

D. Paperwork Reduction Act

This amendment imposes no changes to the information collection and recordkeeping requirements contained in the December 21, 1990 final rule, which was approved by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C. chapter 35.

E. Regulation Identification Number (RIN)

A regulation identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN numbers contained in the heading of this document can be used to cross-reference this action with the Unified Agenda.

F. National Environmental Policy Act

This final rule has been reviewed under the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*) and does not require an environmental impact statement.

List of Subjects**49 CFR Part 107**

Administrative practice and procedure, Hazardous materials transportation, Packaging and containers, Penalties, Reporting and recordkeeping requirements.

49 CFR Part 171

Exports, Hazardous materials transportation, Hazardous waste, Imports, Incorporation by reference, Reporting and recordkeeping requirements.

49 CFR Part 172

Hazardous materials transportation, Hazardous waste, Labeling, Packaging and containers, Reporting and recordkeeping requirements.

49 CFR Part 173

Hazardous materials transportation, Packaging and containers, Radioactive materials, Reporting and recordkeeping requirements, Uranium.

49 CFR Part 174

Hazardous materials transportation, Radioactive materials, Railroad safety.

49 CFR Part 176

Hazardous materials transportation, Maritime carriers, Radioactive materials, Reporting and recordkeeping requirements.

49 CFR Part 177

Hazardous materials transportation, Motor carriers, Radioactive materials, Reporting and recordkeeping requirements.

49 CFR Part 178

Hazardous materials transportation, Motor vehicle safety, Packaging and containers, Reporting and recordkeeping requirements.

49 CFR Part 179

Hazardous materials transportation, Railroad safety, Reporting and recordkeeping requirements.

49 CFR Part 180

Hazardous materials transportation, Motor carriers, Motor vehicle safety, Packaging and containers, Reporting and recordkeeping requirements.

In consideration of the foregoing, 49 CFR Chapter I is amended as follows:

PART 107—HAZARDOUS MATERIALS PROGRAM PROCEDURES

1. The authority citation for part 107 continues to read as follows:

Authority: 49 App. U.S.C. 1421(c), 1802, 1804, 1805, 1806, 1808-1811, 1815; Public Law

89-670, 80 Stat. 933 (49 App. U.S.C. 1853(d), 1855); 49 CFR 1.45 and 1.53 and app. A of 49 CFR part 1.

2. In § 107.315, paragraph (c) is revised and paragraph (d) is added, to read as follows:

§ 107.315 Admission of violations.

(c) Payment of a civil penalty, when the amount of the penalty exceeds \$10,000, must be made by wire transfer, through the Federal Reserve Communications System (Fedwire), to the account of the U.S. Treasury. Detailed instructions on making payments by wire transfer may be obtained from the Salary and Expenses Branch (M-86.2), Accounting Services Division, Office of the Secretary, room 9112, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590-0001 (Tel. No. 202-366-5760). A photocopy of the electronic funds transfer receipt should be sent to the Office of the Chief Counsel (DCC-1), RSPA, room 8405, at the same address.

(d) Payment of a civil penalty, when the amount of the penalty is \$10,000 or less, must be made either by wire transfer, as set forth in paragraph (c) of this section, or certified check or money order payable to "U.S. Department of Transportation" and submitted to the Salary and Expenses Branch (M-86.2), Accounting Services Division, Office of the Secretary, room 9112, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590-0001. A photocopy of that check or money order should be sent to the Office of the Chief Counsel (DCC-1), RSPA, room 8405, at the same address.

PART 171—GENERAL INFORMATION, REGULATIONS, AND DEFINITIONS

3. The authority citation for part 171 continues to read as follows:

Authority: 49 App. U.S.C. 1802, 1803, 1804, 1805, 1808, 1815, 1818; 49 CFR Part 1.

4. In § 171.8, the following definitions are added, revised, or removed, as indicated, in appropriate alphabetical order:

§ 171.8 Definitions and abbreviations.

[Add:]

NRC (non-reusable container) means a packaging (container) whose reuse is restricted in accordance with the provisions of § 173.28 of this subchapter.

[Revise:]

Bulk packaging means a packaging, other than a vessel or a barge, including a transport vehicle or freight container, in which hazardous materials are loaded with no intermediate form of containment and which has:

(1) A maximum capacity greater than 450 L (199 gallons) as a receptacle for a liquid;

(2) A maximum net mass greater than 400 kg (882 pounds) and a maximum capacity greater than 450 L (119 gallons) as a receptacle for a solid; or

(3) A water capacity greater than 454 kg (1000 pounds) as a receptacle for a gas as defined in § 173.115 of this subchapter.

Non-bulk packaging means a packaging which has:

(1) A maximum capacity less than 450 L (119 gallons) as a receptacle for a liquid;

(2) A maximum net mass less than 400 kg (882 pounds) and a maximum capacity less than 450 L (119 gallons) as a receptacle for a solid; or

(3) A water capacity greater than 454 kg (1000 pounds) or less as a receptacle for a gas as defined in § 173.115 of this subchapter.

Oxidizer. See § 173.127 of this subchapter.

§ 171.8 [Amended]

5. In addition, in § 171.8, the second definition of "Oxidizer" is removed.

6. In § 171.12, paragraph (b)(7) is revised to read as follows:

§ 171.12 Import and export shipments.

(b) * * *

(7) A Class 1 material must be classed and approved under the procedures in subpart C of part 173 of this subchapter and conform to the requirements of 172.320 and part 176 of this subchapter.

7. In § 171.12a, the first sentence of paragraph (b) introductory text is revised to read as follows:

§ 171.12a Canadian shipments and packagings.

(b) *Conditions and limitations.* Notwithstanding the requirements of parts 172, 173, and 176 of this subchapter, and subject to the limitations of paragraph (a) of this section, a hazardous material that is classed, marked, labeled, placarded, described on a shipping paper, and packaged in accordance with the Transportation of Dangerous Goods

(TDG) Regulations issued by the Government of Canada may be offered for transportation and transported to or through the United States by motor vehicle or rail car. * * *

8. In § 171.14, the section heading, paragraph (a), the introductory text of paragraph (b), and the introductory text of paragraph (c)(2) preceding the Placard Substitution Table are revised to read as follows:

§ 171.14 Transitional provisions for implementing requirements based on the UN Recommendations.

(a) *General.* The transitional provisions of this section are subject to the following conditions and limitations:

(1) *Purpose.* A rule published in the Federal Register on December 21, 1990, effective October 1, 1991, resulted in a comprehensive revision of this subchapter based on the UN Recommendations. Final rules published in the Federal Register on December 20, 1991, effective October 1, 1991, and on October 1, 1992 in the Federal Register, effective October 1, 1992, further revised the December 21, 1990 final rule. The purpose of the provisions of this section is to provide an orderly transition to the new requirements, so as to minimize any burdens associated with them.

(2) *Scope.* Except as provided in paragraph (a)(3) of this section, during a transition period as provided in paragraphs (b) and (c) of this section, a person may elect to comply with either the applicable requirements of this subchapter in effect on September 30, 1991, or the requirements of this subchapter appearing in the December 20, 1990 rule, as revised in final rules published in the Federal Register on December 20, 1991, and October 1, 1992.

(3) *Applicability.* Final rules issued subsequent to the December 21, 1990 rule may implement different time requirements than the transitional provisions in this section. When the effective date section or regulatory text of a final rule imposes a compliance date earlier or later than that which would be required under this section, the transition date in this section does not apply.

(b) *Transition dates.* Except as provided in paragraph (a) of this section, the following transition dates apply only to requirements in the December 21, 1990 rule, as revised in the December 20, 1991 and October 1, 1992, final rules:

(c) * * *

(2) *Transitional placarding provisions.* Until October 1, 2001, placards which conform to specifications for placards in effect on September 30, 1991 or placards

specified in the December 21, 1990 final rule may be used, for highway transportation only, in place of the placards specified in subpart F of part 172 of this subchapter, in accordance with the following table:

PART 172—HAZARDOUS MATERIALS TABLE, SPECIAL PROVISIONS, HAZARDOUS MATERIALS COMMUNICATIONS, EMERGENCY RESPONSE INFORMATION, AND TRAINING REQUIREMENTS

9. The authority citation for part 172 continues to read as follows:

Authority: 49 App. U.S.C. 1803, 1804, 1805, and 1808; 49 CFR part 1, unless otherwise noted.

§ 172.101 [Amended]

10. In § 172.101, in the Hazardous Materials Table, the following changes are made:

a. For the entry "Acrolein, inhibited", the "+" is removed in Column (1), and, in Column (7), Special Provision "T45" is revised to read "T44".

b. For the entry "Aerosols, *poison, each not exceeding 1 L capacity*", in Column (7), Special Provision "3" is removed.

c. For the entry "Alkali metal alloys, liquid, n.o.s.", in Column (7), Special Provision "B48," is added in appropriate alpha-numeric order.

d. For the second entry for "Ammonia anhydrous liquefied or Ammonia solutions" commas are added to read "Ammonia, anhydrous, liquefied or Ammonia solutions".

e. For the entry "Ammonium nitrate, liquid (*hot concentrated solution*)", Special Provision "B17," is removed.

f. The first entry for "Azido hydroxy tetrazole (*mercury and silver salts*)" is removed.

g. For the entry "Barium peroxide", in Column (8C), "2" is removed and replaced with "242".

h. For the entry "Blue Asbestos (*Crocidolite*) or Brown asbestos (*amosite, mysorite*)", in Column (1), an "I" is added and in Column (2), the words "Blue Asbestos" are revised to read "Blue asbestos".

i. For the first entry for "Bombs, *with bursting charge*", in Division 1.1F, in Column (9A), the word "Forbidden" is revised to read "Forbidden".

j. For the entry "Butane or Butane mixtures *see also* Petroleum gases, liquefied", in Column (7), Special Provision "19" is added.

k. For the entry "Butylene *see also* Petroleum gases, liquefied", in Column (7), Special Provision "19" is added.

l. For the entry "Carbon dioxide and nitrous oxide mixtures", the Column (8C) section reference "244" is revised to read "314, 315".

m. For the entry "Carbon monoxide", the Column (8C) section reference "302" is revised to read "314, 315".

n. For the entry "Combustible liquid, n.o.s.", the entry is amended by moving it to its correct alphabetical sequence following "Collodion, *see* Nitrocellulose *etc.*"

o. For the entry "Corrosive solids, self heating, n.o.s." in Packing Group I, in Column (8C), the section reference "241" is revised to read "243".

p. For the entry "Corrosive solids, which in contact with water emit flammable gases, n.o.s." in Packing Group I, in Column (8C), the section reference "241" is revised to read "243".

q. For the entry "Diethylaminopropylamine", in Column (1), "AW" is removed.

r. For the entry "Dimethylhydrazine, unsymmetrical", in Column (7), Special Provision "B58," is removed and Special Provision "B74," is added in appropriate alpha-numeric order.

s. For the entry "Fusee", the entry is amended by moving it to its correct alphabetical sequence following "Fuse, safety".

t. For the entry "Hexachlorocyclopentadiene", in Column (7), Special Provision "T44" is revised to read "T45".

u. For the entry "Hydrochloric acid, solution", in Column (7), Special Provision "B2" is revised to read "B3".

v. For the entry "Hydrogen cyanide, anhydrous, stabilized", in Column (7), Special Provision "B35," is added in appropriate alpha-numeric order.

w. For the entry "Hydrogen peroxide, aqueous solutions with more than 40 per cent but not more than 60 per cent hydrogen peroxide (*stabilized as necessary*)", in Column (7), Special Provision "BB53" is revised to read "B53".

x. For the entry "Hydroxylamine sulfate", in Column (1), "AW" is removed.

y. For the entry "Isophoronediamine", in Column (1), "AW" is removed.

z. For the entry "Lead compounds, soluble, n.o.s.", the Column (5) packing group reference "II" is revised to read "III" and the Column (6) label "POISON" is revised to read "KEEP AWAY FROM FOOD".

aa. For the entry "Metal powders, flammable, n.o.s." in Packing Group III, in Column (8C), the section reference "140" is revised to read "240".

bb. For the entry "Methanol, or Methyl alcohol", in Column (8C), the

section reference "243" is revised to read "242".

cc. For the entry "Methylhydrazine", in Column (8B), the section reference "227" is revised to read "226".

dd. For the entries "Nitrating acid mixtures with not more than 50 per cent nitric acid" and "Nitrating acid mixtures with 50 per cent or more nitric acid", in Column (7), Special Provision "B47," is added in appropriate alpha-numeric order.

ee. For the entry "PCB see Polychlorinated biphenyls", in Column (1), "D" is removed and replaced with "AW".

ff. For the entry "Phosphorus pentasulfide, free from yellow or white phosphorus", in Column (8C), the section reference "243" is revised to read "242".

gg. For the entry "Propane see also Petroleum gases, liquefied", in Column (7), Special Provision "19" is added.

hh. For the entry "Silicon tetrachloride", in Column (7), Special Provision "N41," is removed.

ii. For the entry "Sodium", in Column (7), Special Provisions "B48," and "T46" are added in appropriate alpha-numeric order and Special Provision "T28," is removed.

jj. For the entry "Sodium bisulfate, solid or solution, see Sodium hydrogen sulfate, solid or solution", in Column (2), the proper shipping name is revised to read "Sodium bisulfate, solution, see Sodium hydrogen sulfate, solution".

kk. For the entry "Substances which in contact with water emit flammable gases, solid n.o.s." in Packing Group III, in Column 8(C) the section reference "242" is revised to read "241" and the proper shipping name in Column (2) is amended by inserting a comma after the word "solid".

ll. For the entry "Sulfuric acid", in Column (7), Special Provision "B2" is revised to read "B3".

mm. For the entry "Sulfuric acid, fuming less than 30 percent free sulfur trioxide", in Column (6), the ", POISON" label is removed.

nn. For the entry "Sulfuryl chloride", in Column (7), Special Provision "B32" is revised to read "B30".

oo. For the entry "Tars, liquid including road asphalt and oils bitumen and cut backs", in Packing Groups II and III, in Column (7), Special Provision "B13," is added in appropriate alpha-numeric order.

pp. For the entry "Titanium tetrachloride", in Column (7), Special Provision "B77," is added in appropriate alpha-numeric order.

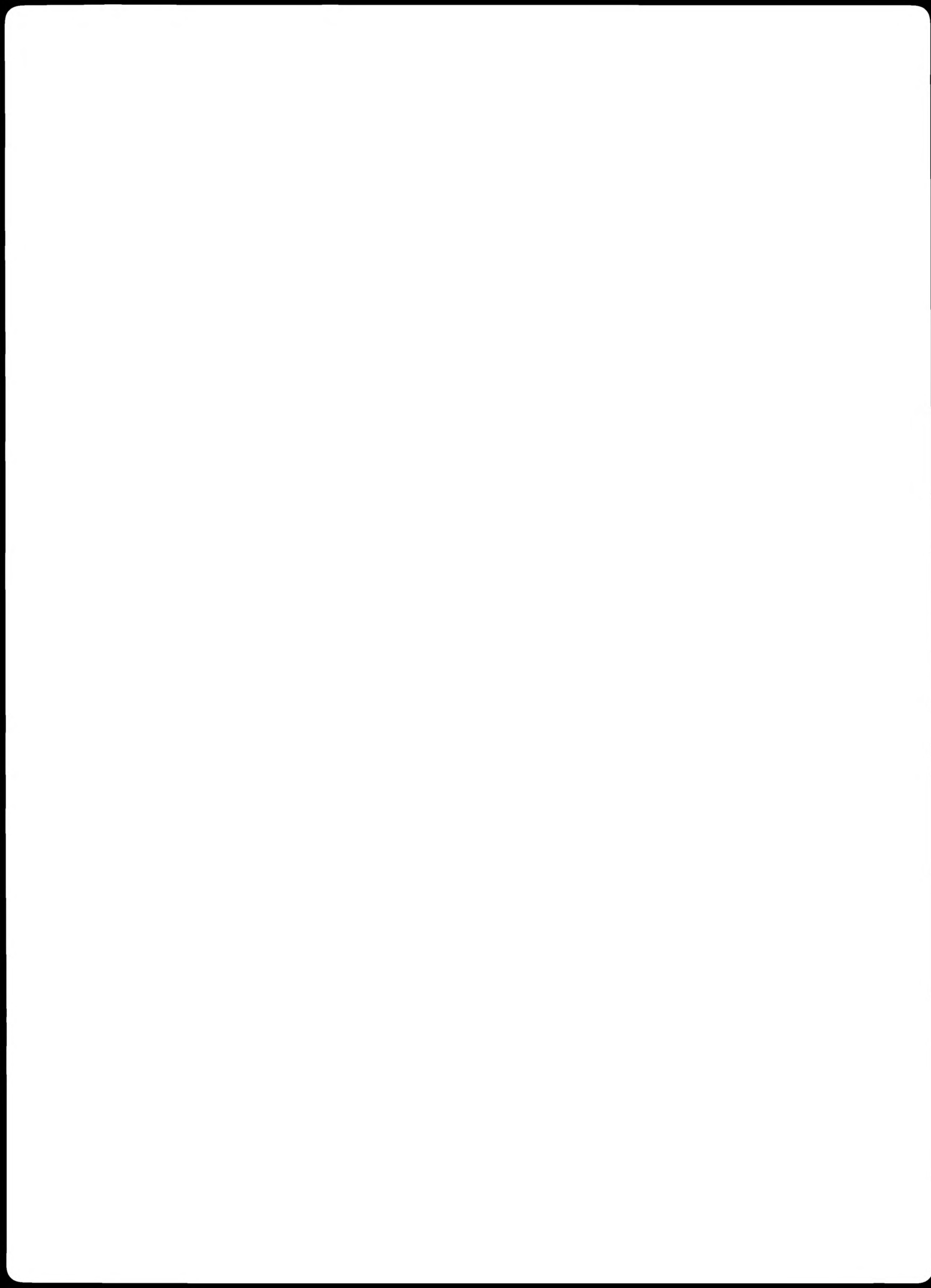
qq. For the entry "(mono-(Trichloro) tetra-(monopotassium dichloro)- penta-s-triazinetriene, dry (containing over 39% available chlorine)", in Column (2), the proper shipping name is amended by removing the first parenthesis preceding "mono-(Trichloro)".

rr. For the entry "Vanadium trichloride", in Column (1), "AW" is removed.

11. In addition, the Hazardous Materials Table is amended by removing, adding, or revising, in appropriate alphabetical sequence, the following entries:

§ 172.101 HAZARDOUS MATERIALS TABLE

Symbols	Hazardous materials descriptions and proper shipping names	Hazard class or division	Identification numbers	Packing group	Label(s) required (if not excepted)	Special provisions	(8) Packaging authorizations (§ 173.***)			(9) Quantity limitations		(10) Vessel stowage requirements	
							Excep- tions	Non-bulk packaging	Bulk packaging	Passenger aircraft or rail car	Cargo air craft only	Vessel stowage	Other stowage provisions
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8A)	(8B)	(8C)	(9A)	(9B)	(10A)	(10B)
	[REMOVE]												
	Asbestos, blue or brown, see Blue asbestos etc.												
	Asbestos, white, see White asbestos etc.												
	Dinitroglucuronil	Forbidden											
W	Fish meal or Fish scrap stabilized.	9	UN2216	III	None	A1	155	218	218	No limit	No limit	A	88, 120
	Isobutane or Isobutane mixtures.	2.1	UN1969		Flammable gas		306	304	314, 315	Forbidden	150 kg	E	40
	Sodium hydrogen sulfate, solid.	8	UN1821	III	Corrosive		154	213	240	25 kg	100 kg	A	
	White asbestos (chrysotile, anthophyllite, tremolite).	9	UN2590	III	Class 9		155	216	240	200 kg	200 kg	A	34, 40
	[ADD]												
	Asbestos	9	NA2212	III	Class 9		155	216	240	200 kg	200 kg	A	34, 40
	Fish meal, stabilized or Fish scrap, stabilized.	9	UN2216	III	None		155	218	218	No limit	No limit	A	88, 120
	Isobutane or Isobutane mixtures see also Petroleum gases, liquefied.	2.1	UN1969		Flammable gas	19	306	304	314, 315	Forbidden	150 kg	E	40
	White asbestos (chrysotile, actinolite, anthophyllite, tremolite).	9	UN2590	III	Class 9		155	216	240	200 kg	200 kg	A	34, 40



§ 172.101, App. [Amended]

12. In the Appendix to § 172.101, in paragraph 2., the reference "§ 172.101(c)(9)" is revised to read "§ 172.101(c)(8)".

13. In § 172.102, the following special provisions are added, revised, or removed as indicated:

- a. In paragraph (c)(1), Special Provisions 19 and 21 are added.
- b. In paragraph (c)(3), Special Provisions B13, B35, and B47 are added and Special Provisions B14 and B69 are revised.

c. In paragraph (c)(7)(ii), T28 is redesignated as T46 and moved to its proper alpha-numeric order and Special Provisions T28, T39 and T43 are added.

§ 172.102 Special provisions.

(c) * * *

(1) * * *

Code/Special Provisions

19. For domestic transportation only, the identification number "UN1075" may be used in place of the identification number specified in Column (4) of the § 172.101 Table. The identification number used must be consistent on package markings, shipping papers and emergency response information.

21. This material must be stabilized by appropriate means (e.g., addition of chemical inhibitor, purging to remove oxygen) to prevent dangerous polymerization (see § 173.21(f) of this subchapter).

(3) * * *

Code/Special Provisions

B13. A nonspecification cargo tank motor vehicle authorized in § 173.247 of this subchapter must be at least equivalent in design and in construction to a DOT 406 cargo tank or MC 306 cargo tank (if constructed before September 1, 1993), except as follows:

a. Packagings equivalent to MC 306 cargo tanks are excepted from §§ 178.340-10, certification; 178.341-4, vents; and 178.341-5, emergency flow control.

b. Packagings equivalent to DOT 406 cargo tanks are excepted from §§ 178.345-14, marking; 178.345-15, certification; 178.346-10, pressure relief; and 178.346-11, outlets.

c. Packagings are excepted from the design stress limits at elevated temperatures, as described in the ASME Code. However, the design stress limits may not exceed 25 per cent of the stress, as specified in § 178.65-5(b) of this subchapter, for 0 temper at the maximum design temperature of the cargo tank.

B14. Each tank, except a multi-unit tank car tank, must be insulated with at least 100 mm (3.9 inches) of cork or other suitable insulation material of sufficient thickness

that the overall thermal conductance at 15.5 °C (60 °F) is not more than 1.533 kilojoules per hour per square meter per degree Celsius (0.075 Btu per hour per square foot per degree Fahrenheit) temperature differential. Insulation systems must not promote corrosion to steel when wet. Tank and jacket protective coatings are required. Additionally, all tank car tanks constructed after October 1, 1988 and tanks repaired after October 1, 1993, where the entire jacket is removed during the repair, must have tank and jacket protective coatings. The jacket must be flashed around all openings so as to be weather tight.

B35. Tank cars containing hydrogen cyanide may be alternatively marked "Hydrocyanic acid, liquefied" if otherwise conforming to marking requirements in subpart D of this part.

B47. A safety relief device with a start-to-discharge pressure setting of 310 kPa (45 psig) is permitted.

B69. Dry sodium cyanide or potassium cyanide may be shipped in sift-proof weather-resistant metal covered hopper cars, covered motor vehicles, portable tanks or non-specification bins. Bins must be approved by the Associate Administrator for Hazardous Materials Safety. Flexible intermediate bulk containers (FIBCs) may also be used under conditions approved by the Associate Administrator for Hazardous Materials Safety.

(7) * * *

(ii) * * *

Code/Special Provisions

T28. See entry for T28 in the IM Tank Configuration Table in paragraph (c)(7)(i) of this section.

T39. See entry for T39 in the IM Tank Configuration Table in paragraph (c)(7)(i) of this section.

T43. See entry for T43 in the IM Tank Configuration Table in paragraph (c)(7)(i) of this section.

§ 172.102 [Amended]

14. In addition, in § 172.102, the following changes are made:

a. In paragraph (c)(1), in Special Provision 4, the wording "Hazard Zone C" is revised to read "Hazard Zone D".

b. In paragraph (c)(1), in Special Provision 12, the word "comply" is revised to read "conform".

c. In paragraph (c)(1), in Special Provision 28, the word "dihydrated" is revised to read "dehydrated".

d. In paragraph (c)(1), in Special Provision 31, the word "nonhazardous" is revised to read "non-hazardous".

e. In paragraph (c)(3), in Special Provisions B2, B3, B4, and B10, the wording "MC 306" is revised to read "MC 300, MC 301, MC 302, MC 303, MC 305, and MC 306".

f. In paragraph (c)(3), in Special Provision B24, the wording "shall be" is revised to read "must be".

g. In paragraph (c)(3), in Special Provision B26, the last two sentences are revised to read "In addition, the material also must be covered with an inert gas or the container must be filled with water to the tank's capacity. After unloading, the residual material also must be covered with an inert gas or the container must be filled with water to the tank's capacity."

h. In paragraph (c)(3), in Special Provision B68, the wording "2069 kPa" is revised to read "2,069 kPa".

i. In paragraph (c)(3), in Special Provision B80, the wording "shall have" is revised to read "must have".

j. In paragraph (c)(3), in Special Provision B90, the wording "equivalent or" is revised to read "equivalent to".

§ 172.203 [Amended]

15. In § 172.203, in paragraph (m)(1), the wording "is not disclosed in the shipping name" is revised to read "is not disclosed in the shipping name or class entry".

§ 172.312 [Amended]

16. In § 172.312, in paragraph (a)(2), a second sentence is added at the end of the paragraph to read "Depicting a rectangular border around the arrows is optional."

§ 172.330 [Amended]

17. In § 172.330, in paragraph (a), the paragraph heading "Shipping name." is revised to read "Shipping name and identification number."

§ 172.405 [Amended]

18. In § 172.405, in paragraph (a) introductory text, the wording "is not required on a label when" is revised to read "is not required on a primary or subsidiary label when".

19. In § 172.422, paragraph (a) is revised to read as follows:

§ 172.422 SPONTANEOUSLY COMBUSTIBLE label.

(a) Except for size and color, the SPONTANEOUSLY COMBUSTIBLE label must be as follows:

BILLING CODE 4910-60-M



BILLING CODE 4910-60-C

20. In § 172.504, the introductory text of paragraph (c) and paragraphs (f)(1) and (f)(4) are revised, and paragraphs (f)(9) and (f)(10) are added to read as follows:

§ 172.504 General placarding requirements.

(c) *Exception for less than 454 kg (1,001 pounds).* Except for bulk packagings and hazardous materials subject to § 172.505, when hazardous materials covered by Table 2 of this section are transported by highway or rail, placards are not required on—

(f) * * * (1) When more than one division placard is required for Class 1 materials on a transport vehicle, rail car, freight container or unit load device, only the placard representing the lowest division number must be displayed.

(4) OXIDIZER placards are not required for Division 5.1 materials on freight containers, unit load devices, transport vehicles or rail cars which also contain Division 1.1 or 1.2 materials and which are placarded with EXPLOSIVES 1.1 or 1.2 placards, as required.

(9) For domestic transportation, a Class 9 placard is not required. A bulk packaging containing a Class 9 material must be marked on each side and each end with the appropriate identification number displayed on an orange panel or a white-square-on-point display configuration are required by subpart D of this part.

(10) For domestic transportation of Division 6.1, PG III materials, a POISON placard may be used in place of a KEEP AWAY FROM FOOD placard.

21. In § 172.505, paragraph (a) is revised to read as follows:

§ 172.505 Placarding for subsidiary hazards.

(a) Each transport vehicle, freight container, portable tank and unit load device that contains a poisonous material subject to the "Poison-Inhalation Hazard" shipping description of § 172.203(m)(3) must be placarded with a POISON or POISON GAS placard, as appropriate, on each side and each end, in addition to any other placard required for that material in § 172.504. Duplication of the POISON or POISON GAS placard is not required.

22. In § 172.510, paragraph (e) is revised to read as follows:

§ 172.510 Special placarding provisions: Rail.

(e) *Chemical ammunition.* Each rail car containing Division 1.1 or 1.2 (explosive) ammunition which also meets the definition of a material poisonous by inhalation (see § 171.8 of this subchapter) must be placarded EXPLOSIVES 1.1 or EXPLOSIVES 1.2 and POISON GAS or POISON.

§ 172.510 [Amended]

23. In addition, in § 172.510, in paragraph (c), in the second sentence, the wording "§ 172.505(c)" is revised to read "§ 172.505".

§ 172.519 [Amended]

24. In § 172.519, in paragraph (b)(3), the wording "For other than Class 7," is revised to read "For other than Class 7 or the OXYGEN placard,".

§ 172.526 [Amended]

25. In § 172.526, in paragraph (a)(4), in the first sentence, "172.540," is added in its appropriate numerical sequence.

26. In § 172.560, paragraph (b) is revised to read as follows:

§ 172.560 CLASS 9 placard.

(b) In addition to conformance with § 172.519, the background on the CLASS 9 placard must be white with seven black vertical stripes on the top half extending from the top of the placard to one inch above the horizontal centerline. The black vertical stripes must be spaced so that, visually, they appear equal in width to the six white spaces between them. The space below the vertical lines must be white with the class number 9 underlined and centered at the bottom.

PART 173—SHIPPERS—GENERAL REQUIREMENTS FOR SHIPMENTS AND PACKAGINGS

27. The authority citation for part 173 continues to read as follows:

Authority: 49 App. U.S.C. 1803, 1804, 1805, 1806, 1807, 1808, 1817; 49 CFR part 1, unless otherwise noted.

§ 173.2 [Amended]

28. In the § 173.2 Table, for the entry "Oxidizer", in the fourth column the entry "§ 173.128" is removed and replaced with "§ 173.127".

§ 173.22 [Amended]

29. In § 173.22, in paragraph (a)(4), the reference "§ 178.2(d)" is revised to read "§ 178.2(c)".

§ 173.23 [Amended]

30. In § 173.23, in paragraph (c), the wording "i.e." is revised to read "e.g.".

§ 173.24a [Amended]

31. In § 173.24a, in paragraph (c)(1)(iii), the wording "Corrosive materials" is revised to read "Corrosive materials (except ORM-D)".

32. § 173.28, a new paragraph (e) is added to read as follows:

§ 173.28 Reuse, reconditioning and remanufacture of packagings.

(e) *Non-reusable containers.* A packaging marked as NRC according to the DOT specification or UN standard requirements of part 178 of this subchapter may be reused for the shipment of any material not required by this subchapter to be shipped in a DOT specification or UN standard packaging.

§ 173.31 [Amended]

33. In § 173.31, in paragraph (c), the following changes are made:

a. In Note i following Retest Table 1, the wording "Associate Director for HMR" is revised to read "Associate Administrator for Hazardous Materials Safety".

b. In Note n following Retest Table 1, the reference "§ 179.102-11 of this chapter" is revised to read "§ 173.314(i)".

§ 173.32 [Amended]

34. In § 173.32, the following changes are made:

a. In paragraph (a)(1), the words "comply with" are revised to read "conform to".

b. In paragraph (a)(3), the reference "§ 173.300" is revised to read "§ 173.115" and the words "complying with" are revised to read "conforming to".

c. In paragraph (a)(5), the reference "§ 172.101(c)(7)" is revised to read "§ 172.102(c)(7)".

d. In paragraph (c), the reference "(e) (3), (4), and (5)" is revised to read "(e) (3) and (4)".

35. In § 173.32c, a new paragraph (r) is added to read as follows:

§ 173.32c Use of Specification IM portable tanks.

(r) Hazardous materials authorized for transport in a tank fitted with bottom outlets having two serially mounted closures are also authorized for transport in a tank fitted with three serially mounted closures and in tanks fitted with no bottom outlets. Similarly, hazardous materials authorized for transport in tanks fitted with bottom outlets having three serially mounted closures are also authorized for transport in tanks fitted with no bottom outlets.

§ 173.32c [Amended]

36. In addition, in § 173.32c, in paragraph (f), the reference "§ 178.270-II(d)" is corrected to read "§ 178.270-11(d)."

§ 173.33 [Amended]

37. In § 173.33, the following changes are made:

a. In paragraph (c)(1)(iii), the reference "§ 173.119(a)(17)(iii)" is revised to read "Special Provision B33 in § 172.102(c)(3) of this subchapter".

b. In paragraph (c)(5), the wording "Poison B material" is revised to read "Division 6.1 (poisonous liquid) material".

c. In paragraph (e), the wording "Poison B liquid" is revised to read

"Division 6.1 (poisonous liquid) material".

§ 173.115 [Amended]

38. In § 173.115, in paragraph (b)(1), the wording "or greater" is added immediately following "280 kPa (41 psia)" and before "at 20 °C".

§ 173.120 [Amended]

39. In § 173.120, in paragraphs (b)(1) and (b)(2), the wording ", except Class 9," is removed both places it appears.

40. In § 173.124, paragraph (a)(3)(ii) is revised to read as follows:

§ 173.124 Class 4 Divisions 4.1, 4.2 and 4.3—Definitions.

(a) * * *

(3) * * *

(ii) Show a burning rate faster than 2.2 mm (0.087 inches) per second when tested in accordance with paragraph 2.c.(2) of appendix E to this part; or

* * *

41. In § 173.133, in paragraph (a)(2)(ii), the introductory text is republished and Figure 1 is revised to read as follows:

§ 173.133 Assignment of packing group and hazard zones for Division 6.1 materials.

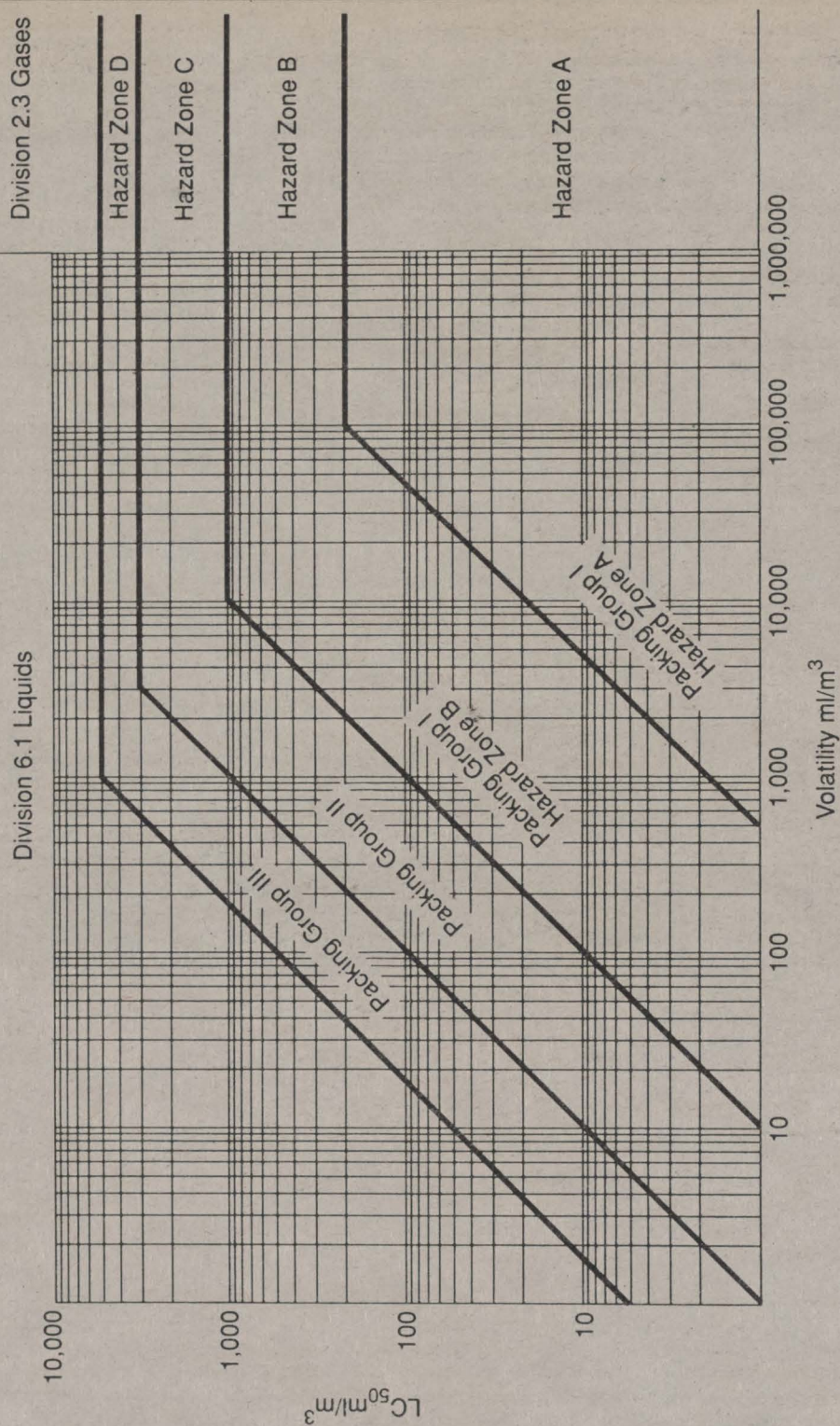
(a) * * *

(2) * * *

(ii) These criteria are represented graphically in Figure 1:

BILLING CODE 4910-80-M

Figure 1
Inhalation Toxicity: Packing Group and
Hazard Zone Borderlines



BILLING CODE 4910-60-C

§ 173.133 [Amended]

42. In addition, in § 173.133, the following changes are made:

a. In the paragraph (a)(1) table, in column 4, "<0.5<2" is revised to read to ">0.5<2".

b. In paragraph (a)(2)(i), in column 1 of the table, add "II" and "III", respectively, for the entries in column 2 beginning "V>LC₅₀" and "V>.2LC₅₀", respectively.

43. Section 173.140 is revised to read as follows:

§ 173.140 Class 9—Definitions.

For the purposes of this subchapter, "miscellaneous hazardous material" (Class 9) means a material which presents a hazard during transportation but which does not meet the definition of any other hazard class. This class includes:

(a) Any material which has an anesthetic, noxious or other similar property which could cause extreme annoyance or discomfort to a flight crew member so as to prevent the correct performance of assigned duties; or

(b) Any material which meets the definition in § 171.8 of this subchapter for an elevated temperature material, a hazardous substance or a hazardous waste.

§ 173.150 [Amended]

44. In § 173.150, the following changes are made:

a. In paragraphs (a) and (f), the wording "except Class 9" is removed.

b. In paragraph (f)(3)(vii), the word "comply" is revised to read "conform".

45. In § 173.154, paragraph (d) is revised to read as follows:

§ 173.154 Exceptions for Class 8 (corrosive materials).

(d) *Materials corrosive to aluminum or steel only.* Except for a hazardous substance or a hazardous waste, a material classed as a Class 8, Packing Group III, material solely because of its corrosive effect—

(1) On aluminum is not subject to any other requirements of this subchapter when transported by motor vehicle or rail car in a packaging constructed of materials that will not react dangerously with or be degraded by the corrosive material; or

(2) On steel is not subject to any other requirements of this subchapter when transported by motor vehicle or rail car in a bulk packaging constructed of materials that will not react dangerously with or be degraded by the corrosive material.

§ 173.156 [Amended]

46. In § 173.156, in paragraph (b), in the second sentence, the wording "unitized in cages, carts or similar overpacks" is revised to read "unitized in cages, carts, boxes or similar overpacks" and the wording "from a distribution center to a retail outlet" is revised to read "from a manufacturer to a distribution center, from a manufacturer or a distribution center to a retail outlet, or return".

47. In § 173.159, new paragraphs (b)(3), (b)(4), (b)(5), and (b)(6) are added to read as follows:

§ 173.159 Batteries, wet.

(b) * * *

(3) 1D plywood drums.

(4) 1G fiber drums.

(5) 1H2 and 3H2 plastic drums and jerricans.

(6) 4H2 plastic boxes.

§ 173.159 [Amended]

48. In addition, in § 173.159, in paragraph (c) introductory text, the word "articles" is revised to read "materials".

§ 173.193 [Amended]

49. In § 173.193, in paragraph (d), the wording "except those containing methyl bromide," is added to immediately follow the word "Cylinders".

§ 173.211 [Amended]

50. In § 173.211, in paragraph (c), for the entry "Plastic receptacle in steel, aluminum, plywood, fiber or plastic drum:" the wording "6HA2" is revised to read "6HA1"; and for the entry "Plastic receptacle in steel, aluminum, wooden, plywood or fiberboard box:" the wording "6HA1" is revised to read "6HA2".

§ 173.225 [Amended]

51. In § 173.225, the following changes are made:

a. In paragraph (e)(2), the wording "MC 310, MC 311 and MC 312 cargo tank motor vehicles" is revised to read "MC 310, MC 311, MC 312 and DOT 412 cargo tank motor vehicles".

b. In paragraph (e)(3), the introductory text and paragraphs (e)(3)(i) through (e)(3)(iii) are redesignated as paragraphs (e)(3)(i) introductory text and (e)(3)(i)(A) through (e)(3)(i)(C), respectively; paragraph (e)(3)(v) is redesignated as new paragraph (e)(3)(ii); and paragraph (e)(3)(iv) is redesignated as paragraph (e)(4).

§ 173.227 [Amended]

52. In § 173.227, in paragraph (b) introductory text, in the first sentence the phrase "or 1H1 drums further packed in a 1A2 or 1H2 drum or a 6HA1 composite" is revised to read "or 1H1 drum or 6HA1 composite further packed in a 1A2 or 1H2 drum".

53. In § 173.244, the section heading is revised to read as follows:

§ 173.244 Bulk packaging for certain pyrophoric liquids (Division 4.2), dangerous when wet (Division 4.3) materials, and poisonous liquids with inhalation hazards (Division 6.1).

54. In § 173.302, paragraph (h) is revised to read as follows:

§ 173.302 Charging of cylinders with non-liquefied compressed gases.

(h) *Poisonous mixtures.* Cylinders containing mixtures meeting Division 2.3 Hazard Zone A must conform to the requirements of § 173.40 of this part.

§ 173.302 [Amended]

55. In addition, in § 173.302, in paragraph (a)(5)(iii), the reference "RR-C-901b" is corrected to read "RR-C-901c" each place it appears.

56. In § 173.304, paragraph (g) is revised to read as follows:

§ 173.304 Charging of cylinders with liquefied compressed gas.

(g) *Poisonous mixtures.* Cylinders containing mixtures meeting Division 2.3 Hazard Zone A must conform to the requirements of § 173.40 of this part.

§ 173.304 [Amended]

57. In addition, in § 173.304, in paragraph (f)(1), in the second sentence, the wording "packaged in Spec. 12B (§ 178.205 of this subchapter) fiberboard boxes equipped with top and bottom pads which will provide three complete thicknesses of fiberboard on top and bottom of each box, or Spec. 15A, 15B, 15C, 19A, or 19B (§ 178.168, 178.169, 178.170, 178.190, 178.191 of this subchapter) wooden boxes" is revised to read "packaged in strong, tight packagings".

58. In § 173.314, the introductory text of paragraph (c) is revised to read as follows:

§ 173.314 Requirements for compressed gases in tank car tanks.

(c) *Authorized gases, filling limits for tank cars.* A person may load and offer a tank car containing a compressed gas

for transportation only in accordance with the following table:

§ 173.314 [Amended]

59. In addition, in § 173.314, the following changes are made:

a. In the table in § 173.314(c), for the entry "Ammonia, anhydrous, or ammonia solutions >50 percent ammonia", in Column 2, the first "Note 21" is revised to read "Note 25".

b. In the table in § 173.314(c), for the entry "Ammonia, solutions with >35 percent <50 percent ammonia by mass", Column 3 is amended by adding "109A," immediately after "105A," and before "112A".

c. In the table in § 173.314(c), for the entry "Division 2.3, Hazard Zone D, materials not specifically identified in this table", in Column 2, the first "Note 21" is revised to read "Note 25"; in Column 3, "105J300W, 109A, 112J340W, 112T340W, 114J340W, 114T340W" is revised to read "105A300W, 109A, 112S340W, 114S340W"; and in Column 4, ".24" is added immediately following "15".

d. In the Notes following the § 173.314(c) table, Notes 21 and 22 are revised and Note 25 is added to read as follows:

Notes:

²¹ The requirements of § 173.24(b) of this subchapter apply.

²² The requirements of § 173.245 of this subchapter apply.

²⁵ The liquefied gas must be loaded so that the outage is at least two percent of the total capacity of the tank at the reference temperature of 46 °C (115 °F) for non-insulated tanks and 41 °C (105 °F) for insulated tanks.

§ 173.315 [Amended]

60. In § 173.315, the following changes are made:

a. In paragraph (a), in the table, in Notes 3, 11, and 16, the words "comply with" are revised to read "conform to".

b. In paragraphs (d) and (i)(12), the reference "paragraph (a)(1)" is revised to read "paragraph (a)".

61. In § 173.336, the section heading and introductory text are revised to read as follows:

§ 173.336 Nitrogen dioxide, liquefied, or dinitrogen tetroxide, liquefied.

Nitrogen dioxide, liquefied, or dinitrogen tetroxide, liquefied, must be packaged in specification cylinders as follows:

PART 174—CARRIAGE BY RAIL

62. The authority citation for part 174 continues to read as follows:

Authority: 49 App. U.S.C. 1803, 1804, 1808; 49 CFR 1.53(e), 1.53(e), app. A to part 1.

§ 174.25 [Amended]

63. In § 174.25, in the paragraph (a)(2) table, for the entry "Division 1.6", in Column 3, the word "Dangerous" is removed and replaced with "(None)".

§ 174.55 [Amended]

64. In § 174.55, in paragraph (c), the wording "bearing markings 'THIS SIDE UP' or 'THIS END UP'" is revised to read "bearing package orientation markings, as prescribed in § 172.312(a) of this subchapter".

§ 174.61 [Amended]

65. In § 174.61, in paragraph (c), the wording "the Federal Railroad Administrator" is revised to read "the Associate Administrator for Safety, FRA".

66. In § 174.81, the paragraph (f) compatibility table is revised to read as follows:

§ 174.81 Segregation of hazardous materials.

(f) * * *

COMPATIBILITY TABLE FOR CLASS 1 (EXPLOSIVE) MATERIALS.

Compatibility group	A	B	C	D	E	F	G	H	J	K	L	N	S
A.....		X	X	X	X	X	X	X	X	X	X	X	X
B.....	X		X	4	X	X	X	X	X	X	X	X	4/5
C.....	X	X		2	2	X	X	X	X	X	X	3	4/5
D.....	X	4	2		2	X	X	X	X	X	X	3	4/5
E.....	X	X	2	2		X	X	X	X	X	X	3	4/5
F.....	X	X	X	X	X		X	X	X	X	X	X	4/5
G.....	X	X	X	X	X	X		X	X	X	X	X	4/5
H.....	X	X	X	X	X	X	X		X	X	X	X	4/5
J.....	X	X	X	X	X	X	X	X		X	X	X	4/5
K.....	X	X	X	X	X	X	X	X	X		X	X	4/5
L.....	X	X	X	X	X	X	X	X	X	X		1	X
N.....	X	X	3	3	3	X	X	X	X	X	X		4/5
S.....	X	4/5	4/5	4/5	4/5	4/5	4/5	4/5	4/5	4/5	X	4/5	

§ 174.81 [Amended]

67. In addition, in § 174.81, the following changes are made:

a. In the Segregation Table in paragraph (d), in the column "Notes", for the entry "Very insensitive explosives.", the letter "A" is added.

b. In paragraph (e)(5), the wording "Division 1.1 (Class A explosive) materials" is revised to read "Division 1.1 (Class A explosive) or Division 1.5 (blasting agents) materials."

§ 174.82 [Amended]

68. In § 174.82, in paragraph (a), the wording "Division 1.6," is added immediately after "contain" and before "combustible liquids".

§ 174.85 [Amended]

69. In § 174.85, in paragraph (b), the wording "must comply with train positioning requirements of paragraph (d) of this section and" is added immediately following "RADIOACTIVE".

PART 176—CARRIAGE BY VESSEL

70. The authority citation for part 176 continues to read as follows:

Authority: 49 App. U.S.C. 1803, 1804, 1805, 1808; 49 CFR 1.53, App. A to part 1.

71-72. In § 176.83, in paragraphs (c)(2)(i) (A) and (B), the text preceding the illustrations is revised to read as follows:

§ 176.83 Segregation.

(c) * * *
(2) * * *
(i) * * *

(A) Package containing incompatible goods.

(B) Reference package.

§ 176.600 [Amended]

73. In paragraph (d), the wording "Division 2.3 (Poison A) material" is revised to read "Division 2.3 (poisonous gas) material" and the wording

"Division 6.1 (Poison B) material" is revised to read "Division 6.1 (poison) material".

PART 177—CARRIAGE BY PUBLIC HIGHWAY

74. The authority citation for part 177 is revised to read as follows:

Authority: 49 App. U.S.C. 1803, 1804, 1805; 49 CFR part 1.

§ 177.805 [Amended]

75. Section 177.805 is amended by removing the paragraph designation (a).

76. In § 177.848, the paragraph (f) compatibility table is revised to read as follows:

§ 177.848 Segregation of hazardous materials.

(f) * * *

COMPATIBILITY TABLE FOR CLASS 1 (EXPLOSIVE) MATERIALS.

Compatibility group	A	B	C	D	E	F	G	H	J	K	L	N	S
A		X	X	X	X	X	X	X	X	X	X	X	X
B	X		X	4	X	X	X	X	X	X	X	X	%
C	X	X		2	2	X	X	X	X	X	X	3	%
D	X	4	2		2	X	X	X	X	X	X	3	%
E	X	X	2	2		X	X	X	X	X	X	3	%
F	X	X	X	X	X		X	X	X	X	X	X	%
G	X	X	X	X	X	X		X	X	X	X	X	%
H	X	X	X	X	X	X	X		X	X	X	X	%
J	X	X	X	X	X	X	X	X		X	X	X	%
K	X	X	X	X	X	X	X	X	X		X	X	%
L	X	X	X	X	X	X	X	X	X	X		X	%
N	X	X	3	3	3	X	X	X	X	X	1	X	X
S	X	%	%	%	%	%	%	%	%	%	X	%	%

§ 177.848 [Amended]

77. In addition, in § 177.848, the following changes are made:

a. In the Segregation Table in paragraph (d), in the column "Notes", for the entry "Very insensitive explosives.", the letter "A" is added.

b. In paragraph (e)(5), the wording "Division 1.1 (Class A explosive) materials" is revised to read "Division 1.1 (Class A explosive) or Division 1.5 (blasting agents) materials".

PART 178—SPECIFICATIONS FOR PACKAGINGS

78. The authority citation for part 178 continues to read as follows:

Authority: 49 App. U.S.C. 1803, 1804, 1805, 1806, 1808; 49 CFR part 1.

§ 178.44-15 [Amended]

79. In § 178.44-15, paragraph (a)(2) is added and reserved.

§ 178.45-7 [Amended]

80. In § 178.45-7, paragraph (c)(2) is added and reserved.

§ 178.270-5 [Amended]

81. In § 178.270-5, in paragraph (a), the word "deka-newtons" is revised to read "decanewtons" and in paragraphs (c) and (d), the wording "deka newtons" is revised to read "decanewtons".

§ 178.337-1 [Amended]

82. In § 178.337-1, in paragraph (b), the reference "§ 173.315(a)(1)" is revised to read "§ 173.315(a)".

§ 178.337-11 [Amended]

83. In § 178.337-11, in paragraph (a)(4)(i)(B), the date "May 16, 1973" is revised to read "May 16, 1969".

§ 178.345-2 [Amended]

84. In § 178.345-2, in paragraph (a)(2), the designation "ASTM B-209 Alloy 5654" is revised to read "ASTM B-209 Alloy 5652".

85. In § 178.345-11, in the first sentence in paragraph (a), the word "exclusively" is removed, and paragraphs (b)(2) and (c) are revised to read as follows:

§ 178.345-11 Tank outlets.

(b) * * *

(2) Bottom loading outlets which discharge lading into the cargo tank through fixed internal piping above the maximum liquid level of the tank need not be equipped with a self-closing system.

(c) Any loading/unloading outlet extending beyond an internal self-closing stop-valve, or beyond the innermost external stop-valve which is part of a self-closing system, must be fitted with another stop-valve or other leak-tight closure at the end of such connection.

* * *

§ 178.345-11 [Amended]

86. In addition, in § 178.345-11, in paragraph (b)(1)(iii), the wording "Poison B liquids" is revised to read "Division 6.1 (poisonous liquid) materials".

§ 178.507 [Amended]

87. In § 178.507, in paragraph (a), the wording "ID" is revised to read "1D".

§ 178.601 [Amended]

88. In § 178.601, in paragraph (h), the reference "§§ 178.505-178.523" is revised to read "§§ 178.504-178.523".

§ 178.603 [Amended]

89. In § 178.603, in paragraph (a), the following changes are made:

a. In the text preceding the table, a new sentence is added after the first sentence to read "For other than flat drops, the center of gravity of the test packaging must be vertically over the point of impact."

b. In the paragraph (a) table, the heading of the second column is revised to read "No. of tests (samples)".

§ 178.606 [Amended]

90. In § 178.606, the following changes are made:

a. In paragraph (c)(1), three new sentences are added at the end of the paragraph to read "In guided load tests, stacking stability must be assessed after completion of the test by placing two filled packagings of the same type on the test sample. The stacked packages must

maintain their position for one hour. Plastic packagings must be cooled to ambient temperature before this stacking stability assessment."

b. The fourth sentence in paragraph (d) is removed.

Appendix B [Amended]

91. In appendix B to part 178, in the first sentence of paragraph (4), the wording "For drums, the following test may be used:" is revised to read "For other than design qualification testing, the following test may be used for metal drums."

PART 179—SPECIFICATIONS FOR TANK CARS

92. The authority citation for part 179 continues to read as follows:

Authority: 49 App. U.S.C. 1803, 1804, 1805, 1806, 1808; 49 CFR part 1, unless otherwise noted.

§ 179.101-1 [Amended]

93. In § 179.101-1, in paragraph (a), in the second table, for the entry "Minimum plate thickness, inches, shell and heads", in the column "112A200W 12", footnote 1 is removed.

§ 179.200-18 [Amended]

94. In § 179.200-18, paragraph (b)(4) is removed.

PART 180—CONTINUING QUALIFICATION AND MAINTENANCE OF PACKAGINGS

95. The authority citation for part 180 continues to read as follows:

Authority: 49 App. U.S.C. 1803; 49 CFR part 1.

§ 180.403 [Amended]

96. In § 180.403, in the definition "Corrosive to the tank/valve", the section reference "§ 173.240" is revised to read "§ 173.136".

§ 180.405 [Amended]

97. In § 180.405, in paragraph (g)(2), the wording "the hydrostatic testing requirements in § 178.354-5(b)" is revised to read "the hydrostatic testing requirements in § 178.345-5(b)".

§ 180.407 [Amended]

98. In § 180.407, paragraph (d)(2)(vii) is removed and reserved and a semicolon is added at the end of (d)(2)(viii) in place of the period.

99. In § 180.409, the introductory text of paragraph (b) is revised to read as follows:

§ 180.409 Minimum qualifications for inspectors and testers.

(b) A motor carrier or cargo tank owner who meets the requirements of paragraph (a) of this section may use an employee who is not a Registered Inspector to perform a portion of the pressure retest required by § 180.407(g). External and internal visual inspections must be accomplished by a Registered Inspector, but the hydrostatic or pneumatic pressure test, as set forth in § 180.407(g)(1)(viii) and (ix), respectively, may be done by an employee who is not a Registered Inspector provided that—

100. In § 180.413, as amended at 55 FR 37069, September 7, 1990, an error was contained in the amendatory language, which incorrectly stated that paragraph (d)(1)(v) was revised. Instead it should have stated that paragraph (d)(2)(v) was revised. Therefore, paragraph (d)(2)(v) is correctly revised to read as follows:

§ 180.413 Repair, modification, stretching, or rebarrelling of cargo tanks.

(d) * * *
(2) * * *

(v) Change the existing specification plate to reflect the cargo tank as modified, attach a supplemental specification plate noting appropriate changes that have been made to the cargo tank, or remove the existing specification plate and attach a new specification plate to the cargo tank;

101. In § 180.415, the first two sentences of paragraph (b) are removed and three new sentences are added in their place and the last sentence in paragraph (c) is revised to read as follows:

§ 180.415 Test and inspection markings.

(b) Each cargo tank must be durably and legibly marked, in English, with the date (month and year) and the type of test or inspection performed. The date must be readily identifiable with the applicable test or inspection. The marking must be in letters and numbers at least 32 mm (1.25 inches) high, on the tank shell near the specification plate or anywhere on the front head. * * *

(c) * * * For a cargo tank motor vehicle composed of multiple cargo tanks constructed to different specifications, which are tested and inspected at different intervals, the test and inspection markings must appear in the order of the cargo tank's corresponding location, from front to rear.

Issued in Washington, DC on September 17, 1992 under authority delegated in 49 CFR part 1.

Douglas B. Ham,
Acting Administrator, Research and Special
Programs Administration.

[FR Doc. 92-23042 Filed 9-30-92; 8:45 am]

BILLING CODE 4910-60-M